

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 04

<p>In the Matter of:</p> <p>WHOLE FOODS MARKET SERVICES, INC.,</p> <p style="text-align: center;">Respondent,</p> <p>and</p> <p>SAVANNAH KINSER, SUVERINO FRITH, LYLAH STYLES, ABDULAI BARRY, KIRBY BURT, KAYLEB CANDRILLI, LEEA KELLY, TRUMAN READ, HALEY EVANS, JUSTINE O'NEILL, JOLINA CHRISTIE, SARITA WILSON, CAMILLE TUCKER-TOLBERT, CASSIDY VISCO, YURI LONDON, ANA BELEN DEL RIO-RAMIREZ, CHRISTOPHER MICHNO, As Individuals,</p> <p style="text-align: center;">Charging Parties.</p>	<p>Case Nos: 01-CA-263079 01-CA-266440 01-CA-263108 01-CA-264917 01-CA-265183 01-CA-273840 04-CA-262738 04-CA-263142 04-CA-264240 04-CA-264841 05-CA-264906 05-CA-266403 10-CA-264875 19-CA-263263 20-CA-264834 25-CA-264904 32-CA-263226 32-CA-266442</p>
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The above-entitled matter came on for hearing pursuant to notice, before **ARIEL SOTOLONGO**, Administrative Law Judge, at **National Labor Relations Board, The Wanamaker Building, 100 East Penn Square, Suite 403, Philadelphia, Pennsylvania,** on **Tuesday, June 7, 2022, at 10:00 a.m.**

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1		<u>I N D E X</u>				
2						<b>VOIR</b>
3	<b><u>WITNESSES</u></b>	<b><u>DIRECT</u></b>	<b><u>CROSS</u></b>	<b><u>REDIRECT</u></b>	<b><u>RECROSS</u></b>	<b><u>DIRE</u></b>
4						
5	Kayleb Candrilli	1246	1349	1447	--	1289
6		1338		1449		1308
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9	Truman Read	1456	--	--	--	--
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1	<u>E X H I B I T S</u>		
2	<u>EXHIBIT</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
3	GENERAL COUNSEL'S		
4	GC-47	1252	1253
5	GC-48	1254	--
6	GC-49	1461	--
7	GC-50	1270	1290
8	GC-51	1297	1299
9	GC-52	1296	1300
10	GC-53	1307	1309
11	GC-54	1329	1334
12			
13	RESPONDENT'S		
14	R-47	1360	1362
15	R-48	1362	1368
16	R-49	1369	1372
17	R-50	1384	1388
18	R-51	1402	1404
19	R-52	1412	1416
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21	R-54	1425	1428
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P R O C E E D I N G S

(Time Noted: 10:00 a.m.)

**JUDGE SOTOLONGO: Okay. Let's go on the record.**

All right. Good morning. This is Judge Sotolongo. We're here this morning, and this is the resumption of a case in Whole Foods Markets case. I'm not going to repeat all the case numbers because there are too many of them.

All the parties are present. We had some preliminary discussions off the record regarding some housekeeping matters, scheduling matters. The parties informed me that we're going to be concluding earlier this week than we had anticipated. We are originally booked through Friday.

Because of the unavailability of a couple of witnesses, we have decided that the General Counsel will present its case. And, then the Respondent will -- since we are due to come back in 2 weeks, both for the testimony of an expert witness, assuming that goes ahead, and the Respondent would have I believe 3 additional witnesses.

So we may be concluding this case earlier than Friday, probably on Thursday of this week, and then we'll come back on the week of the 20th to resume, to take the testimony of the expert, if that is the case. I mean by that, I mean that there's been a motion filed by the Respondent seeking to preclude the testimony of the expert that the General Counsel intends to introduce.

1           The General Counsel's response to the motion is due  
2 today. And after I get the General Counsel's response, over  
3 the next few days, I'll consider the matter, and I'll make a  
4 ruling next week. So that's why I'm saying, if the expert  
5 testimony. Assuming that I don't preclude the testimony of  
6 the expert, we will resume on Tuesday, the 21st here, and  
7 then we'll hear the testimony of that expert witness. And  
8 then the Respondent will have three witnesses. Is that  
9 correct?

10           MR. PETERSON: Yes, Your Honor.

11           MR. BROWN: Yes.

12           JUDGE SOTOLONGO: Very well. And -- all right. Without  
13 any further adieu, any other preliminary matters?

14           MR. PETERSON: Yes, Your Honor. I'd like to make a  
15 statement for the record regarding electronic exhibits if I  
16 may.

17           JUDGE SOTOLONGO: Please. Go ahead.

18           MR. PETERSON: So, Your Honor, before offering  
19 additional exhibits in this case as we've previously  
20 discussed, I wish to state the General Counsel's intention to  
21 offer and receive exhibits in electronic form where  
22 practicable. And, with respect to each exhibit offered and  
23 received in electronic form, the exhibit is contemplated for  
24 offering and receipt in electronic form and if there is no  
25 request to have electronic documents scanned or otherwise

1 formatted by the court reporting service.

2 JUDGE SOTOLONGO: All right. Okay. Very well.

3 I have a question. I also have a note that Mr. Samuel  
4 Ritterman is here for the Charging Party. Are you --  
5 Mr. Ritterman, are you with the Lichten Liss firm or are you  
6 with the Zaffarese --

7 MR. RITTERMAN: Ahmad Zaffarese, Your Honor.

8 JUDGE SOTOLONGO: Very well. Okay. So I guess we don't  
9 expect Ms. Doherty here this week. Is that correct?

10 MR. RITTERMAN: She will be here tomorrow.

11 JUDGE SOTOLONGO: Good, because I have some questions  
12 regarding her motion to keep certain documents under seal,  
13 and before I make a ruling, I want to ask her some questions.  
14 I may ask a question of the Respondent as well. And so very  
15 good. So welcome, Mr. Ritterman.

16 MR. RITTERMAN: Thank you, Your Honor.

17 JUDGE SOTOLONGO: All right. And, General Counsel, are  
18 you ready to call your first witness?

19 MR. PETERSON: Yes, Your Honor. General Counsel calls  
20 Kayleb Candrilli.

21 JUDGE SOTOLONGO: Ms. Candrilli, would you please step  
22 forward here? Okay. You can remove your mask.

23 MS. CANDRILLI: Thank you.

24 JUDGE SOTOLONGO: All right. Will you please -- first  
25 of all, let me swear you in. Will you please raise your



1 right hand?

2 (Whereupon,

3 **KAYLEB CANDRILLI**

4 was called as a witness by and on behalf of the General  
5 Counsel and, after having been first duly sworn, was examined  
6 and testified as follows:)

7 JUDGE SOTOLONGO: All right. Thank you. Could you  
8 spell your name for us and give us your address?

9 THE WITNESS: Kayleb, K-a-y --

10 JUDGE SOTOLONGO: K-a-y --

11 THE WITNESS: -- l-e-b.

12 JUDGE SOTOLONGO: -- l-e-b. Okay. Kayleb.

13 THE WITNESS: Candrilli, C-a-n --

14 JUDGE SOTOLONGO: C-a-n --

15 THE WITNESS: -- d-r-i --

16 JUDGE SOTOLONGO: -- d-r-i --

17 THE WITNESS: -- l-l-i.

18 JUDGE SOTOLONGO: -- l-l-i.

19 THE WITNESS: And I just moved. So a new address.

20 JUDGE SOTOLONGO: Okay. Go ahead.

21 THE WITNESS: 2551 South Alder Street.

22 JUDGE SOTOLONGO: All right.

23 THE WITNESS: 19148 in Philadelphia.

24 JUDGE SOTOLONGO: So, Kayleb is K-a-e, correct?

25 THE WITNESS: K-a-y --

1 JUDGE SOTOLONGO: Oh, K-a-y. So your name was  
2 misspelled on the --

3 THE WITNESS: I noticed that.

4 JUDGE SOTOLONGO: Okay. All right. So -- all right.  
5 Very well. Okay. Someone who has his name misspelled  
6 often --

7 THE WITNESS: Yeah.

8 JUDGE SOTOLONGO: -- Ms. Candrilli, I can sympathize  
9 with you. All right. Please proceed, Mr. Peterson.

10 MR. PETERSON: Thank you, Your Honor.

11 **DIRECT EXAMINATION**

12 Q. BY MR. PETERSON: Good morning.

13 A. Good morning.

14 Q. As you know, I'm counsel for the General Counsel. We're  
15 going to be asking you some questions in this case. Listen  
16 carefully, answer truthfully. If you don't understand a  
17 question, let us know and we can state it again in a  
18 different way. And remember that this is being recorded. So  
19 it's important to articulate answers and try and speak up.

20 I'll start off by asking you if you have any preferred  
21 pronouns or titles?

22 A. I use they, them, theirs and Mx.

23 Q. Mx.

24 A. Um-hum.

25 Q. Is that Mx. Period?

1 A. Mx.

2 Q. And is that non-bindery?

3 A. Gender neutral honorific.

4 Q. Okay.

5 JUDGE SOTOLONGO: How do you pronounce that by the way?

6 Is it -- I should address you as --

7 THE WITNESS: Mx.

8 JUDGE SOTOLONGO: Mx.

9 THE WITNESS: Yeah, just like --

10 JUDGE SOTOLONGO: Mx.

11 THE WITNESS: -- there was a I in there.

12 JUDGE SOTOLONGO: All right. All right.

13 Q. BY MR. PETERSON: Mx. Candrilli, are you familiar with  
14 the Company called Whole Foods?

15 A. Yes, I am.

16 Q. And how are you familiar with Whole Foods?

17 A. As an employee.

18 Q. Over what time period did you work at Whole Foods?

19 A. This coming August it will be 4 years.

20 Q. And you're currently employed by Whole Foods?

21 A. I am.

22 Q. And do you work at a particular store throughout this  
23 time?

24 A. The duration, at the Whole Foods Market, South Street in  
25 Philadelphia.

1 Q. And did you work in more than one position during your  
2 tenure at Whole Foods?

3 A. I have. I was a cashier in the front end, customer  
4 service, and then part-time team member in seafood.

5 JUDGE SOTOLONGO: One thing I ask you, Mx. Candrilli,  
6 these microphones you have in front of you, they --

7 THE WITNESS: You need a little more oomph?

8 JUDGE SOTOLONGO: Excuse me.

9 THE WITNESS: You need a little more oomph?

10 JUDGE SOTOLONGO: Yes, because they only record. They  
11 don't amplify your voice. They only record. So they need to  
12 be able to hear you way over there.

13 THE WITNESS: All right.

14 JUDGE SOTOLONGO: And so the microphone will hear you  
15 but don't --

16 THE WITNESS: Don't shout.

17 JUDGE SOTOLONGO: Okay. Yes. You don't need to shout  
18 but just raise your voice if you would. Thank you.

19 Q. BY MR. PETERSON: Okay. So a lot of these questions --  
20 the majority of these questions are going to be focused on  
21 the summer of 2020. In what position were you working in the  
22 summer of 2020?

23 A. Part-time team member in seafood.

24 Q. And can you give us a general description of your  
25 duties?

1 A. I set the pans, put the fish out, break down the order  
2 and then I'm customer facing.

3 Q. And is seafood its own department?

4 A. It is its own department.

5 Q. Can you describe some of the other departments at your  
6 store?

7 A. Seafood, meat, bakery, grocery, customer service,  
8 specialty, et cetera.

9 Q. And again referring to the summer of 2020, can you give  
10 us a description of the management structure at your store?

11 A. So it's the team members. Above them would be a team  
12 trainer, and then assistant team leader and then a team  
13 leader for any given department. So team leader for seafood,  
14 et cetera, et cetera. And then assistant store team leaders.  
15 In the instance of South Street, that's three assistant store  
16 team leaders, and one STL, which is the store team leader.

17 Q. And who do you recall who your assistant team leader,  
18 team leader, store leader, assistant store leaders were  
19 during the summer of 2020?

20 A. My assistant team leader was kind of in flux at that  
21 time. So I'm not super sure, but Robert Cluck (ph.) was my  
22 team leader in seafood. And then the ASTLs, Albana, Jamie  
23 and Matt. I don't want to mess up their last names. And the  
24 store team leader, Joseph Burton.

25 Q. Are you familiar with the term, Black Lives Matter, and

1 the acronym, BLM?

2 A. Yes, I am.

3 Q. And how are you familiar with the phrase, Black Lives  
4 Matter?

5 A. Culturally relevant.

6 Q. And can you explain a little bit?

7 A. Black Lives Matter is a movement, contemporary movement  
8 for equity in the United States. It's been a large part of  
9 my cultural awareness, political awareness, et cetera, et  
10 cetera, through the 2010s.

11 Q. And was there any -- was Black Lives Matter, was that of  
12 any particular significance in Philadelphia or elsewhere  
13 around the country during that summer of 2020?

14 A. Yes, it was.

15 Q. Can you describe that?

16 A. There was civil uprising, you know, a Civil Rights  
17 Movement, the largest that I had seen taking place that was  
18 June, beginning of June 2020. Black Lives Matter was the  
19 organization at the helm because, of course, they have  
20 chapters and are organized, you know.

21 Q. Were you aware of any protests going on around the  
22 country related to Black Lives Matter during that time  
23 period?

24 A. I was aware of protests around the country and in  
25 Philadelphia.

1 JUDGE SOTOLONGO: Is that from media or from personal  
2 observation or both?

3 THE WITNESS: Both.

4 JUDGE SOTOLONGO: Okay.

5 THE WITNESS: And a lot of social media.

6 Q. BY MR. PETERSON: Have you worn anything at work with  
7 the phrase, Black Lives Matter or BLM?

8 A. I have.

9 Q. About how many times?

10 A. I have two shifts a week. So I was wearing it pretty  
11 consistently for a period of 2 to 3 months at least.

12 Q. And over what time period roughly was this?

13 A. Beginning around June 2020 and continuing forth.

14 Q. Can you describe what you wore?

15 A. I wore a pin that said Black Lives Matter on the front  
16 of my seafood cap, larger than a nickel, around the size of a  
17 half dollar perhaps.

18 JUDGE SOTOLONGO: Again, I didn't hear. Where did you  
19 wear this pin?

20 THE WITNESS: On the front of my cap.

21 JUDGE SOTOLONGO: Oh, you were wearing a cap?

22 THE WITNESS: Yes.

23 JUDGE SOTOLONGO: Was it a Whole Foods cap?

24 THE WITNESS: No.

25 JUDGE SOTOLONGO: Just a regular cap.

1 THE WITNESS: Yes.

2 JUDGE SOTOLONGO: Was there any other writing or  
3 language or --

4 THE WITNESS: No other insignia on my hat.

5 JUDGE SOTOLONGO: Okay. Thank you.

6 MR. PETERSON: Permission to approach the witness, Your  
7 Honor.

8 JUDGE SOTOLONGO: Please do.

9 **(General Counsel's Exhibit 47 marked for identification.)**

10 Q. BY MR. PETERSON: I'm showing you what's been marked as  
11 General Counsel's Exhibit 47. I'll give you a chance to look  
12 at that, and let me know if you recognize it or what's  
13 depicted in that document?

14 A. I do recognize it.

15 Q. And what is that depicting on General Counsel's 47?

16 A. Those are the Black Lives Matter pins that I had made  
17 and helped distribute.

18 Q. Is that the, is that the same pin you were describing  
19 that you were wearing on your hat?

20 A. That is the same pin.

21 Q. And you said had made. Can you describe what you mean  
22 by that?

23 A. I solicited a friend to make them free of cost on a  
24 quick turn around, and they did that for me and for us.

25 MR. PETERSON: Move for the admission of General



1 Counsel's 47.

2 JUDGE SOTOLONGO: Any voir dire?

3 MS. SCHAEFER: No, Your Honor.

4 JUDGE SOTOLONGO: General Counsel 47 is admitted.

5 **(General Counsel's Exhibit 47 received in evidence.)**

6 JUDGE SOTOLONGO: Any question -- and Ms. -- Mx.

7 Candrilli, excuse me. These Black Lives Matter pins, I don't  
8 know. To me, they look the size of a quarter. Would that be  
9 right or --

10 THE WITNESS: I think a half dollar-ish.

11 JUDGE SOTOLONGO: Half dollar. Okay.

12 THE WITNESS: A little bigger than a quarter.

13 JUDGE SOTOLONGO: And they're all the same, a black  
14 background with the Black Lives Matter wording in white?

15 THE WITNESS: All uniform.

16 JUDGE SOTOLONGO: Is that correct?

17 THE WITNESS: Yes.

18 JUDGE SOTOLONGO: Okay. Thank you.

19 Q. BY MR. PETERSON: Did you wear any other Black Lives  
20 Matter or BLM messaging at work at Whole Foods?

21 A. Eventually I wore a necklace that had the letters, BLM,  
22 as opposed to the pin which said Black Lives Matter all  
23 spelled out.

24 JUDGE SOTOLONGO: By the way, when did you start wearing  
25 this pin again?

1 THE WITNESS: This pin, I feel like my first shift in  
2 that pin was around July 4th.

3 JUDGE SOTOLONGO: July 4th of 2020?

4 THE WITNESS: No, it would be the Monday after June  
5 19th, would be my first shift in that pin.

6 JUDGE SOTOLONGO: Of 2020?

7 THE WITNESS: Of 2020.

8 JUDGE SOTOLONGO: Okay. So sometime in late June?

9 THE WITNESS: Yes.

10 JUDGE SOTOLONGO: Okay. Go ahead. Thank you.

11 Q. BY MR. PETERSON: Did you notice other workers at Whole  
12 Foods wearing Black Lives Matter pins or other Black Lives  
13 Matter ornaments?

14 A. Yes.

15 Q. Can you describe some of those?

16 A. Many were these pins that had been distributed. People  
17 were also wearing Black Lives Matter masks. Some people were  
18 wearing necklaces to the same effect, either with BLM or  
19 Black Lives Matter spelled out. Some people had it on their  
20 shoes, written, handwritten.

21 MR. PETERSON: Another permission to show another  
22 exhibit to the witness.

23 JUDGE SOTOLONGO: You may.

24 **(General Counsel's Exhibit 48 marked for identification.)**

25 Q. BY MR. PETERSON: I'll give you a chance to look through

1 that, and let me know when you've done so.

2 JUDGE SOTOLONGO: Yeah, before we proceed. I have a 48  
3 already existing for General Counsel. It was an email -- oh,  
4 that one -- I think that may be Respondent's. Is that -- was  
5 that 48?

6 MR. PETERSON: I believe, I believe --

7 MS. SCHAEFER: Actually I have us both on 46.

8 MR. PETERSON: I believe that -- I believe I marked 48.

9 JUDGE SOTOLONGO: Right.

10 MR. PETERSON: Well, it could have been me. I know I  
11 had a number of exhibits marked, and I maybe discussed one or  
12 two but didn't ultimately offer them. So I -- as far as --

13 MR. PETERSON: My notes said I have to check on that. I  
14 know it was an email. I note it was from Mr. DeVitto (ph.).  
15 I guess he -- I got the details --

16 MS. SCHAEFER: Oh, I think that it did not get -- it  
17 ultimately was not marked. There was a back and forth about  
18 that exhibits.

19 MR. PETERSON: Yeah.

20 MS. SCHAEFER: And it ultimately did not come into the  
21 record, but it wasn't actually marked as an exhibit either.

22 JUDGE SOTOLONGO: Okay.

23 MS. SCHAEFER: I had your last exhibit as 46 I think.

24 MR. PETERSON: Yeah, 46.

25 JUDGE SOTOLONGO: That's right then.

1 MR. PETERSON: 46 was just for the record, because I  
2 think it's confusing. I have 46 as --

3 JUDGE SOTOLONGO: All right. So 48 was never admitted.  
4 It was never introduced. Okay.

5 MR. PETERSON: Yeah, there was one document that I  
6 withdrew.

7 JUDGE SOTOLONGO: Okay.

8 MR. PETERSON: I don't think I offered it.

9 JUDGE SOTOLONGO: All right. So go ahead. I apologize.  
10 I just wanted to clarify that.

11 MS. SCHAEFER: No, it's best for us to all be on the  
12 same page.

13 JUDGE SOTOLONGO: Okay. Go ahead, Mr. Peterson. So  
14 you're marking this as 48, and you can go ahead and ask Mx.  
15 Candrilli about these photos.

16 Q. BY MR. PETERSON: Okay. Have you had a chance to look  
17 through the photographs?

18 A. I have.

19 Q. Page 1, can you -- do you recognize that?

20 A. I do, yeah.

21 Q. It appears to be the same as General Counsel's 47.

22 A. This hat right here, yes.

23 Q. Is that your hat?

24 A. It is. It's older now.

25 Q. Do you recognize page 2 of General Counsel's 48? Do you

1 recognize what's on that?

2 A. I believe I do, yeah.

3 Q. And can you describe what it is and where you've seen it  
4 before?

5 A. I believe that it's a mask worn by Leea Kelly at Whole  
6 Foods Market, South Street.

7 Q. Do you recall seeing her wear that at work?

8 A. I remember hearing and speaking with her that she had  
9 worn it. We don't work in the same parts of the store or did  
10 not. So.

11 Q. Turning to page 3, do you recognize, do you recognize  
12 that?

13 A. I do.

14 Q. And can you tell us what it is and where you've seen it  
15 before?

16 A. It's a copper wire BLM pin made by Leea Kelly. These  
17 were disseminated through the store as well. I do remember  
18 seeing these worn on aprons and the like.

19 Q. There were multiple individuals --

20 A. There were multiple.

21 Q. -- wearing this? And then page 4.

22 A. These are my favorite, lovely as I mentioned. These are  
23 the clay necklaces that had BLM versus Black Lives Matter,  
24 yeah.

25 Q. Yeah. It looks like some of them say the full phrase,

1 Black Lives Matter --

2 A. Um-hum.

3 Q. -- and some say BLM?

4 A. That was so that people who wanted to participate at  
5 different levels could. It was a more punitive situation if  
6 it said Black Lives Matter than if it said BLM at that time.

7 JUDGE SOTOLONGO: And by the way, Leea Kelly who's the  
8 person on the second page, in the photograph, she's an  
9 employee of Whole Foods?

10 THE WITNESS: Was in that summer.

11 JUDGE SOTOLONGO: Back then she was an employee.

12 THE WITNESS: Yes.

13 JUDGE SOTOLONGO: Okay. Go ahead.

14 MR. PETERSON: She's one of the Charging Parties as  
15 well.

16 JUDGE SOTOLONGO: Okay. Right.

17 Q. BY MR. PETERSON: Page 4, did you see employees wearing  
18 these necklaces at work?

19 A. Yes.

20 JUDGE SOTOLONGO: Can you give us a time period again  
21 for when these Black Lives Matter, you said, to be clear. So  
22 the second page is Ms. Kelly wearing what appears to be a  
23 mask with --

24 THE WITNESS: Stitching.

25 JUDGE SOTOLONGO: -- with stitching on it. And it

1 says -- at the top of this photo. There's a heart at the  
2 very end. Is that correct? What appears to be heart?

3 MS. SCHAEFER: And so, Your Honor, can I just -- for a  
4 second, before we -- I have some voir dire, but before we get  
5 too far into the actual exhibits, I think the witness can  
6 testify that they did not take this photograph, that has  
7 maybe seen this photograph but I'm not sure this witness is  
8 the appropriate witness to do this with.

9 JUDGE SOTOLONGO: Okay. So you didn't take these  
10 photographs?

11 THE WITNESS: I took the first photograph.

12 JUDGE SOTOLONGO: The one with the pins, the bag with  
13 pins.

14 THE WITNESS: The bag with the pins, and I'm familiar  
15 with the objects in the last three. I have seen the third  
16 and the fourth photograph for sure.

17 Q. BY MR. PETERSON: Are the photographs accurate  
18 depictions of what you've described and seen at work?

19 A. Yes, they are.

20 MR. PETERSON: All right. Yeah, I move for the  
21 admission of General Counsel's 48.

22 MS. SCHAEFER: So, I'm going to object.

23 JUDGE SOTOLONGO: All right. I think these photos need  
24 to be -- at least the ones on page -- I guess page 2, 3 and  
25 4, need to be authenticated because -- so you didn't take

1 the -- you did not take the photo of Ms. Kelly or -- nor of  
2 the, nor of the copper pin nor of the all the pendants?

3 THE WITNESS: I did not take those three photographs.

4 JUDGE SOTOLONGO: You've seen employees wearing those in  
5 the store?

6 THE WITNESS: Yes, and I believe two of these  
7 photographs were in the Telegram chat shared.

8 JUDGE SOTOLONGO: Okay. Do you have a witness who can  
9 authenticate these photos?

10 MR. PETERSON: Well, I don't think we need to know who  
11 took the photos as well as they're an accurate depiction of  
12 what's being described in the testimony. The witness has  
13 testified that she's seen these before and they're certainly  
14 demonstrative of her testimony and what it is.

15 We have additional witnesses that will be talking about  
16 these exhibits, not the -- well, and the photographer to the  
17 extent it matters but I believe that, you know, photographs  
18 can be admitted if they are an accurate depiction of what is  
19 being described in --

20 JUDGE SOTOLONGO: All right.

21 MR. PETERSON: -- the testimony. That's the purpose  
22 that they're being offered for.

23 MS. SCHAEFER: I just want to be clear that the witness  
24 testified they did not see the person who we believe has been  
25 identified as Ms. Kelly wearing this mask, nor has ever



1 observed the mask in public. I think there's some confusion,  
2 too, about what exactly the mask says. If there's a  
3 different witness we can talk to. I think the first  
4 photograph is also duplicative of GC Exhibit 47. And, you  
5 know, I -- again it I think there's seven different  
6 necklaces, and I'm not sure that the testimony that you  
7 elicited necessitates this photograph. If there's another  
8 witness we can do this with, I would just as soon do that.

9 MR. PETERSON: Well, sure. I mean I think you can voir  
10 dire the witness about those questions and --

11 MS. SCHAEFER: You actually did a great job on eliciting  
12 all the information I needed to make that point.

13 JUDGE SOTOLONGO: Well, again I -- if he has actually  
14 seen these objects, the author of the photograph, it's not  
15 ultimately important. What we need -- I think we need a  
16 little more foundation as to exactly when he observed these  
17 items being worn, by whom, in what time periods and in the  
18 case of the pendants and that, as observed, there's about  
19 seven of them, whether he saw each and every one on them or  
20 he has seen some but not other, you know, it's unclear.

21 MR. PETERSON: Your Honor, just to, just to point  
22 something out, Mx. Candrilli prefers they as a pronoun.

23 JUDGE SOTOLONGO: Yeah.

24 MR. PETERSON: As opposed to he.

25 JUDGE SOTOLONGO: I'm sorry.

1 THE WITNESS: It's --

2 JUDGE SOTOLONGO: It's just an old habit.

3 THE WITNESS: We'll power through.

4 JUDGE SOTOLONGO: Okay.

5 MR. PETERSON: Yeah, certainly. So I think that, yeah,  
6 the witness has described these, and we have some more  
7 descriptions. As the testimony goes on, we can -- the  
8 timeline will become more clear. I'm offering it now. If  
9 they're rejected now, we'll try again later, but I think the  
10 witness has --

11 JUDGE SOTOLONGO: All right. Well, I'm going to  
12 reserve. Obviously the first page was submitted. It's  
13 repetitive of General Counsel's 47. The other three, I'm  
14 going to reserve ruling on. I'll make a ruling as we get  
15 more testimony either from this witness or other witnesses.

16 MR. PETERSON: Sure. Thank you.

17 JUDGE SOTOLONGO: Okay.

18 Q. BY MR. PETERSON: And just going to page 4 of that  
19 exhibit, which -- do you recall seeing any of those specific  
20 necklaces?

21 A. I specifically wore the one that was third from the  
22 right.

23 Q. You wore the one third from the right?

24 A. Yeah, the green BLM.

25 Q. Third from the left.

1 A. Sorry, yes.

2 Q. The green BLM, you personally wore that one?

3 A. Yes.

4 MS. SCHAEFER: I'm sorry. Just for my edification, the  
5 circle or the rectangle?

6 THE WITNESS: The rectangle.

7 MS. SCHAEFER: Thank you.

8 Q. BY MR. PETERSON: And how did you get the idea to wear  
9 the -- and I'll just say, BLM, and when I say BLM, I'm  
10 referring to BLM or Black Lives Matter or those phrases, but  
11 where did you get the idea to wear BLM, the phrase at work?

12 A. We had become aware. "We" being a collection of  
13 employees. In a Telegram chat, we had became aware of folks  
14 being sent home for wearing BLM at other stores, other Whole  
15 Foods stores in our general vicinity, vicinity being, you  
16 know, New Hampshire, so kind of coastal. That is how we got  
17 the idea to wear the pins all at once on June 19th, 2020.

18 Q. Can you describe -- just back up a little bit. But you  
19 mentioned a Telegram. What are you referring to? What is a  
20 Telegram?

21 A. Referring to an encrypted text messaging type of  
22 platform that was started prior to June 2020, somewhere  
23 between the onset of the pandemic, March 2020, and June 2002.  
24 It was made for the purpose of sharing if we had symptoms of  
25 COVID-19 because that information wasn't being disseminated.

1 So we, the employees, made that chat so we could communicate  
2 to one another if we grew ill.

3 Q. So the members of this chat, were they all employees of  
4 the Whole Foods store that you worked at?

5 A. At the inception of the chat, they were all current  
6 employees.

7 Q. And about how many participants were there in this?

8 A. I think at the beginning around 20 or 23, in that  
9 window. Towards June, the beginning of June 2020, we fell to  
10 about 16.

11 Q. And I think you said the initial purpose of the chat was  
12 to discuss COVID related issues?

13 A. Correct.

14 MS. SCHAEFER: Objection. That's not what you said.

15 THE WITNESS: Symptoms.

16 Q. BY MR. PETERSON: Something related to COVID. It was --

17 A. If one of us grew ill, we would report in the chat that  
18 we had fallen ill with symptoms like COVID-19.

19 Q. And did the subject matter of this Telegram chat evolve?

20 A. It did.

21 Q. Can you describe the timeline of its evolution and  
22 what -- and how it evolved?

23 A. In the beginning of June 2020, it became much more  
24 censored on labor activism and not necessarily things related  
25 to COVID-19, that were going wrong in the store, safety

1 issues, you know, issues about racism in the workplace,  
2 transphobia in the workplace, shifted into a more  
3 unionization type of talk.

4 Q. And --

5 A. Or at least organizing.

6 Q. And what -- when you say unionization talk, what are you  
7 referring to?

8 A. We just realized that a lot of things were going poorly  
9 in the store and there was a lot of us and perhaps we should  
10 start participating in collective actions to improve the  
11 conditions of the store. And that chat had already been  
12 established for a different purpose. So it was already  
13 populated with people.

14 Q. Was there a triggering event that caused the chat to  
15 evolve from COVID into the --

16 A. Yeah.

17 Q. -- other matters you described?

18 A. I believe it was June 1st, 2020, our store team leader  
19 on the first day of the protests in Philadelphia,  
20 Pennsylvania, fed and gave a bunch of water and merchandise  
21 to the Philadelphia police with whom we share a structure.  
22 So we're a one block building. On the other end of the block  
23 is a police station. The other end is a Whole Foods.

24 Q. And what were the concerns about that? Did you identify  
25 him by name?

1 A. Joseph Burton.

2 Q. And what were the employees' concerns about what  
3 Mr. Burton had done?

4 A. The concerns were that it was without tact in the  
5 particular moment of June 1st, 2020, but also that it would,  
6 you know, attract some ire of other folks outside of the  
7 store. And that the product, so far as we knew at that time  
8 and was later confirmed, was not accounted for. So I think  
9 logistically we were angry that -- to us, it seemed like the  
10 product invincible.

11 Q. And then how did -- and then -- so that was kind of a  
12 triggering event. Any other events that followed Joe Burton  
13 giving the police issue that came up?

14 A. Yeah. There was a whistleblower in that situation.  
15 They posted to the effect that Joe Burton had done this and  
16 that person was later terminated. So.

17 Q. And any other motivating events that you recall from  
18 those discussions?

19 A. Yeah. So at the time, the store was being boarded up,  
20 and closed and evacuated, all without them using the texting  
21 function that's supposed to alert of emergency, et cetera, et  
22 cetera. So Philadelphia, early June 2020, curfews were  
23 coming down.

24 Q. And just to -- sorry to interrupt, but is this -- what  
25 was going on? Like why is the store being shut down?

1 A. Nationwide protests but also, of course, protests at the  
2 local level, the Philadelphia level. Yeah. So those stores  
3 were -- my store was boarded up and evacuated, multiple  
4 consecutive days. The information that the store had been  
5 evacuated was not disseminated on the texting. So people got  
6 locked outside, outside curfew which was upsetting and  
7 motivating in terms of --

8 JUDGE SOTOLONGO: So if I understand correctly, there  
9 was a curfew. Do you recall what hour or what time the  
10 curfew started?

11 THE WITNESS: No, but I'm sure it would be easy to find.

12 JUDGE SOTOLONGO: So at some point word got out that the  
13 store needed to be evacuated and that was past the curfew  
14 hour or how was that?

15 THE WITNESS: The issue was, in addition to the store  
16 being boarded up, the door code was also changed. So people  
17 that were coming in for overnight shifts which had to be  
18 outside of curfew, could not get into the building that was  
19 boarded up without a door code outside of curfew --

20 JUDGE SOTOLONGO: I see. I see.

21 THE WITNESS: -- which was dangerous. It's just a  
22 motivating factor.

23 MS. SCHAEFER: Yeah, can I object just on the grounds  
24 that the witness hasn't demonstrated direct knowledge of what  
25 she just testified about.

1           MR. PETERSON: Well, it's not being offered for the  
2 truth of the matter asserted. Its employees and their  
3 discussions and reports about their workplace concerns.

4           JUDGE SOTOLONGO: Okay. Well, I'll -- sorry.  
5 Overruled. I'll give it whatever weight it is appropriate.  
6 I'm not going to take it for the truth of the matter  
7 asserted. Go ahead.

8           Now one thing I want to ask you, Mx. Candrilli, is that  
9 rather than -- because you're going to draw objections if you  
10 do others. Answer the question that Mr. Peterson or any  
11 other attorney asks you and stop, rather than go on in a  
12 narrative.

13          THE WITNESS: Got it.

14          JUDGE SOTOLONGO: Because if you start going beyond the  
15 scope of the question, then you're going to draw an  
16 objection. So I'm sure that if Mr. Peterson wants you to  
17 further expand, he will ask you additional questions to let  
18 you expand on what you just said, okay. Thank you.

19          THE WITNESS: Thank you.

20 Q.   BY MR. PETERSON: Any other motivating issues or events  
21 that you recall?

22          MS. SCHAEFER: Object to the form of the question.  
23 Motivating, I guess my question is when you're saying  
24 motivating, are you saying motivated to Black Lives Matter?

25          MR. PETERSON: No, no, no, I'm talking about just the



1 group chat discussions, where they're talking about workplace  
2 issues and concerns.

3 MS. SCHAEFER: And what would be the relevance of that  
4 to this issue?

5 MR. PETERSON: Well, there's about to be --

6 JUDGE SOTOLONGO: All right. Don't address him.  
7 Address me.

8 MS. SCHAEFER: I apologize, Your Honor. I'll address  
9 you.

10 JUDGE SOTOLONGO: All right. Well, I can see some  
11 tangential relevance, but I'm not going to let you go too  
12 far. So if you're trying to tie this down to the Black Lives  
13 Matter issue, then we're here talking about, then it's fine,  
14 but I won't let you end the discussion with, you know, other  
15 things that employees may have been concerned about, that's  
16 not at issue in this case.

17 MR. PETERSON: I understand, Your Honor.

18 Q. BY MR. PETERSON: Earlier in your testimony you  
19 mentioned hearing something about workers -- something  
20 happened to workers at another store?

21 A. Correct.

22 Q. Can you describe what that -- what your understanding  
23 was about that and where you got that understanding from?

24 A. We had two folks -- this is a story I remember in  
25 particular that felt like a catalyst. Two people wear Black

1 Lives Matter masks and were sent home from work. So we saw  
2 that news coverage and felt galvanized.

3 Q. Do you remember where that store was located?

4 A. I think it was New Hampshire, Connecticut, somewhere up  
5 there. The first name of one of the people was Caleb. So.

6 Q. Caleb?

7 A. Um-hum.

8 Q. Do you -- did you -- do you know if these concerns, the  
9 employees' concerns that you were discussing were brought to  
10 management's attention?

11 A. I do not know that they were.

12 MR. PETERSON: All right. Permission to approach the  
13 witness, Your Honor.

14 JUDGE SOTOLONGO: Go ahead.

15 **(General Counsel's Exhibit 50 marked for identification.)**

16 Q. BY MS. SCHAEFER: Mx. Candrilli, let me know when you've  
17 had a chance to look through the exhibit.

18 A. I've looked through it.

19 Q. And you recognize what's in that exhibit?

20 A. I do.

21 Q. Can you tell us what it is?

22 A. That's a sequence of three emails that were sent by a  
23 collection of Whole Foods Market, South Street employees, one  
24 of them being myself, that were asking for concessions and  
25 better workplace conditions amidst everything that was going

1 on in June 2020.

2 Q. The email -- starting with just page 1, the email says  
3 it's from WFM employees coalition. Do you see that?

4 A. Yes, I do.

5 Q. And do you know, do you know who that email --

6 A. Me.

7 Q. -- belongs to?

8 A. Yeah.

9 Q. That's you?

10 A. Yes.

11 JUDGE SOTOLONGO: Is that an email you created?

12 THE WITNESS: At the time and then dissolved later.

13 JUDGE SOTOLONGO: Okay.

14 THE WITNESS: Before we even get to the third email, we  
15 had moved onto another.

16 MS. SCHAEFER: Your Honor, this is just a logistical  
17 thing but I just would ask the witness, I apologize, just  
18 wait until the question is complete so that I get a chance to  
19 object before the answer comes out.

20 JUDGE SOTOLONGO: Yes. So the way we -- the way these  
21 court proceedings take place or the way we do things in these  
22 proceedings is that let the attorney -- even though you know  
23 what he -- the attorney is going to be asking you, let the  
24 attorney finish the question and then before you answer, if  
25 there is an objection, stop, and then I'll address the

1 objection. If I say overruled, it means you can go ahead and  
2 answer the question. If I say sustained, it means that the  
3 attorney is going to have to rephrase the question because I  
4 find something improper about it.

5 THE WITNESS: Okay.

6 JUDGE SOTOLONGO: So let -- so the bottom line is to let  
7 the attorney finish the question. That will allow counsel to  
8 object if he or she thinks that the question is improper, and  
9 then that will also allow me to address the objection before  
10 you go ahead and answer. Thank you.

11 THE WITNESS: Thanks.

12 Q. BY MR. PETERSON: Okay. Who is -- are you -- was anyone  
13 else involved in the creation of this email?

14 A. Yes, the creating meaning the drafting of the email,  
15 yes.

16 Q. And you don't have to identify whoever it is by name,  
17 but who else was involved generally?

18 A. Two or three other people that were inside of the  
19 Telegram chat with me.

20 Q. And to whom is this email addressed?

21 A. A few people it looks like.

22 Q. And just -- yeah, you don't have to identify everyone  
23 but who were you intending it to reach?

24 A. This was the first email we sent. So it wasn't just  
25 people -- oh, I'm sorry. I apologize.

1 Q. Who were you intending to reach?

2 A. We were intending to reach as many people as was  
3 possible, certainly at our store level but then higher up in  
4 the Mid Atlantic Region of management.

5 JUDGE SOTOLONGO: So the addressees in this group are  
6 all managers of one type or another or are there employees in  
7 this group, just regular employees, rank and file employees?

8 THE WITNESS: There's no team members which would be  
9 like the lowest ranking --

10 JUDGE SOTOLONGO: But rather this is a management group  
11 you're addressing this to?

12 THE WITNESS: It should have reached everyone in the  
13 store that has an email --

14 JUDGE SOTOLONGO: I see.

15 THE WITNESS: -- including team members. There should  
16 be an alias, just something that reached everyone.

17 JUDGE SOTOLONGO: I see.

18 THE WITNESS: Yeah.

19 JUDGE SOTOLONGO: So this was addressed to both managers  
20 and employees?

21 THE WITNESS: As many as could be reached.

22 JUDGE SOTOLONGO: Okay. All right. Thank you.

23 Q. BY MR. PETERSON: And what was the purpose of sending  
24 this first email dated June 12th?

25 A. We were looking for some accountability on the part of

1 store leadership, their behavior in the beginning of June  
2 2020. Yeah, we were being coerced into one-on-one meetings  
3 with someone we didn't feel safe being in one-on-one meetings  
4 with. We did not want to do that.

5 Q. Looking at the text of the email, the first paragraph  
6 going onto the -- the first paragraph, is that a discussion  
7 about Joe Burton that you had -- you described earlier?

8 MS. SCHAEFER: Your Honor, I'm going to object here.  
9 Again, I just haven't had a chance to voir dire, but I -- the  
10 question was about page 1 of the exhibit, and I'm not sure  
11 what the relevance of this is to the question of why  
12 employees were wearing the Black Lives Matter.

13 MR. PETERSON: Yeah, it's all related. There's a lot of  
14 logical outgrowth going on here. There's some --

15 JUDGE SOTOLONGO: All right. Well, I'll you tie it up  
16 if you can, Mr. Peterson. Before I rule, go ahead and try  
17 to. I'll allow you some leeway to try to make a connection.

18 MR. PETERSON: Certainly.

19 JUDGE SOTOLONGO: That's what you're here for.

20 MR. PETERSON: Certainly.

21 Q. BY MR. PETERSON: Yeah. So just that first paragraph it  
22 appears to be a discussion about the incident with Joe Burton  
23 that you described earlier.

24 A. Right.

25 Q. Is that correct?

1 A. Yes.

2 Q. The part on top of page 2, where it says he also put the  
3 location of product and his employees at risk by doing so.

4 Do you see that?

5 A. Yes.

6 Q. What did you mean by that?

7 A. By drawing the ire of folks by inviting such a large  
8 presence of police into the store with such a diverse  
9 workforce, that we're feeling extremely unsafe at that time  
10 more so by his relationship, yeah.

11 Q. And what were you -- by saying employees at risk, were  
12 you intending to refer to --

13 A. I was intending to black employees.

14 JUDGE SOTOLONGO: Let me ask you this, Mx. Candrilli.  
15 So this happened shortly after -- or these events happened --  
16 this email was sent shortly after the store was boarded up.  
17 Is that correct? And I'm thinking about the timing here.

18 THE WITNESS: Yeah. So this was June 12th.

19 JUDGE SOTOLONGO: All right. So just -- let us know.  
20 What was exactly occurring at the time? In other words, I  
21 assume that there was some civil unrest in Philadelphia as  
22 well as other parts of the nation, at a time there was  
23 some -- unfortunately there was looting going on with some  
24 store windows being broken, some conflicts between  
25 demonstrators and the police. Would that be a correct

1 description?

2 THE WITNESS: I wouldn't use the term looting but, yes.

3 JUDGE SOTOLONGO: You wouldn't use which terms?

4 THE WITNESS: Looting.

5 JUDGE SOTOLONGO: Okay. Well, you know what looting  
6 means?

7 THE WITNESS: I do.

8 JUDGE SOTOLONGO: So -- okay. All right. So let's put  
9 it this way. Windows were being broken. Would that be  
10 accurate?

11 THE WITNESS: Not ours.

12 JUDGE SOTOLONGO: Not yours, but in other places?

13 THE WITNESS: I'm sure.

14 JUDGE SOTOLONGO: And you believe that Whole Foods took  
15 this measure as a precautionary measure --

16 THE WITNESS: To protect the product, yeah.

17 JUDGE SOTOLONGO: All right. And this was happening in  
18 the immediate area where was located, some of these  
19 incidents?

20 THE WITNESS: I'm sure so. I didn't see a ton of that  
21 on South Street.

22 JUDGE SOTOLONGO: Okay.

23 THE WITNESS: Yeah.

24 JUDGE SOTOLONGO: And you had mentioned that there was a  
25 curfew that had been imposed by the authorities in the City



1 of Philadelphia or just certain parts of the City of  
2 Philadelphia?

3 THE WITNESS: I believe it was the entire city. I'm not  
4 sure.

5 JUDGE SOTOLONGO: Okay. And do you recall what the time  
6 period of the curfew was?

7 THE WITNESS: Date range?

8 JUDGE SOTOLONGO: Yeah. From what time to what time was  
9 the curfew?

10 THE WITNESS: I don't know from what time to what time  
11 in the day, but I do believe it was June 1st onward. I don't  
12 know when the stopping date was.

13 JUDGE SOTOLONGO: Yeah, but was it a curfew that was  
14 imposed in the evening time?

15 THE WITNESS: Yeah.

16 JUDGE SOTOLONGO: The time at night to early morning?

17 THE WITNESS: Um-hum.

18 JUDGE SOTOLONGO: Okay. All right. I'm just trying to  
19 get a little background so we can put this in context as to  
20 what was happening at the time and why the store was boarded  
21 up, why -- and perhaps why in this email I guess you  
22 expressed --

23 THE WITNESS: We.

24 JUDGE SOTOLONGO: Excuse me.

25 THE WITNESS: We expressed.

1 JUDGE SOTOLONGO: Meaning you -- yeah, you meaning --  
2 plural, right?

3 THE WITNESS: The --

4 JUDGE SOTOLONGO: You expressed a concern about their  
5 personal safety in the context of you might draw the anger of  
6 some of the demonstrators who may have seen -- see the store  
7 as being cooperating with the police. Is that context? I'm  
8 trying to explain -- I'm not trying to step on any toes here.  
9 I'm trying to explain the context.

10 THE WITNESS: There was a lot of press coming out of the  
11 store about a person's termination and about Joe -- Joseph  
12 Burton feeding the police. It was getting a lot of  
13 attention.

14 MS. SCHAEFER: I object it's not responsive to your  
15 question. I know --

16 JUDGE SOTOLONGO: Okay. Well, I'm trying to get an  
17 understanding. You mean having some news coverage of the  
18 fact that -- now, Joe Burton is the team leader of the store?

19 THE WITNESS: Was at that time.

20 JUDGE SOTOLONGO: Store leader.

21 THE WITNESS: Store team leader.

22 JUDGE SOTOLONGO: Okay. And you said there was some  
23 media or coverage of the fact that he had provided food --

24 THE WITNESS: He had done that. There was a lot of  
25 media coverage about Meghan Murray's termination from the

1 Company for having --

2 JUDGE SOTOLONGO: Meghan Murray was an employee who  
3 was -- was an employee of Whole Foods?

4 THE WITNESS: Yeah, at the time.

5 JUDGE SOTOLONGO: All right. And this employee was  
6 terminated?

7 THE WITNESS: Correct, for whistleblowing --

8 MS. SCHAEFER: Objection.

9 THE WITNESS: -- for telling the world that Joseph  
10 Burton had fed the police on June 1st, 2020.

11 JUDGE SOTOLONGO: All right. I'm not going to take that  
12 for the truth of the matter asserted. I'm just trying to get  
13 -- understand the context, you know, which this email was  
14 sent.

15 THE WITNESS: Yes.

16 JUDGE SOTOLONGO: And what concerns, if any, those who  
17 sent this email or who was joined in this email message had  
18 and why this -- I'm just trying to provide some context.

19 Okay. Go ahead.

20 Q. BY MR. PETERSON: Yeah. I guess -- I think you covered  
21 it for the most part. But, you know, where you say putting  
22 employees at risk and then the next paragraph indicates that  
23 not only did Joe Burton dissolve the trust. It also  
24 endangered our safety. I'm just also trying to get an  
25 understanding as the Judge was, about what you, you know,

1 what you were referring to about employee safety and risk in  
2 the context of this email.

3 A. My coworkers were afraid of the cops in that particular  
4 instance.

5 Q. And as I understand it, they -- Joe Burton's conduct,  
6 you or some of your coworkers, did they view that as inviting  
7 the police --

8 A. Yes.

9 Q. -- to the store?

10 A. Absolutely.

11 Q. The second full paragraph on page 2 --

12 A. That begins in response?

13 Q. Yeah, that begin in response, mentions one-on-one  
14 meetings with Joe Burton and this is inappropriate.

15 A. Correct.

16 Q. What did you mean by that? What is that referring to?

17 A. That refers to the power dynamics between a team member  
18 and a store team leader being unbalanced, and because of the  
19 optics I -- they wanted black women to talk to him  
20 separately, and we couldn't allow that to happen.

21 Q. In the one-on-one meetings, when did the one-on-one  
22 meetings --

23 A. With Joe Burton --

24 MS. SCHAEFER: Can I, can I object? This isn't relevant  
25 to the question of whether Whole Foods prohibiting the phrase

1 Black Lives Matter. The issue before Your Honor is not  
2 whether Joe Burton was having --

3 JUDGE SOTOLONGO: We're --

4 MR. PETERSON: We're close.

5 JUDGE SOTOLONGO: We're straying somewhat, Mr. Peterson.  
6 So I want you to narrow the focus of your questions.

7 MR. PETERSON: Yeah. Certainly. No, I understand, Your  
8 Honor. This is kind of the beginning and it's building up to  
9 ultimately the, you know, the wearing of the Black Lives  
10 Matter but these are some of the tantamounting concerns that  
11 employees had.

12 JUDGE SOTOLONGO: Again I mean I think this email, I'm  
13 reading it, and I think this email speaks for itself.

14 MR. PETERSON: Yeah, I mean if that's the case -- I mean  
15 it doesn't --

16 JUDGE SOTOLONGO: There's language here that, for  
17 example, mentions Lylah Styles and Kayla Green (ph.) and so  
18 forth. So I think, I think it speaks for itself and you  
19 don't need to go much further into that.

20 MR. PETERSON: Okay.

21 MS. SCHAEFER: I'm sorry, Your Honor. When you were  
22 saying -- what were you looking at when --

23 JUDGE SOTOLONGO: Page -- last page.

24 MS. SCHAEFER: Oh, okay. So just to be clear, that's a  
25 different -- these are three separate emails.

1 JUDGE SOTOLONGO: Right.

2 MS. SCHAEFER: Sent on 3 separate days.

3 JUDGE SOTOLONGO: Right.

4 MS. SCHAEFER: Okay.

5 JUDGE SOTOLONGO: And I'm trying to tie it down as to  
6 what dates. I'm not sure that it's clear on the face. One  
7 was June 15th. The last one was sent June 15th.

8 MR. PETERSON: Right.

9 THE WITNESS: June 12th, June 15th and June 18th.

10 JUDGE SOTOLONGO: Okay.

11 Q. BY MR. PETERSON: Yes, these were emails that -- maybe  
12 I'll go to the heart of it and then work back perhaps. So  
13 that will perhaps tie it in but skipping the June 15th email,  
14 moving onto the June 18th email, I'll just point out that on  
15 page 6 of the exhibit, the second paragraph -- I'm sorry --  
16 the third paragraph, what -- so what that says, on Friday, we  
17 encourage all team members to wear Black Lives Matter masks,  
18 shirts, et cetera, in solidarity with the Black Lives Matter  
19 movement. What was the purpose in pointing that out or  
20 making that statement in this email?

21 A. The purpose of that statement was to show solidarity  
22 with black team members across the nation, particularly Kayla  
23 and Lylah but also for our black team members in the store.  
24 We go on to say that we stand against anti-blackness at a  
25 local and national level.

1 Q. And in that third paragraph, it appears to mention that  
2 we've been actively following fellow team members' peaceful  
3 protests in Bedford, New Hampshire, where Lylah Styles and  
4 Kayla Green were sent home for wearing BLM masks. Is that  
5 what you were referring to in your earlier testimony about  
6 learning that employees --

7 A. It is.

8 Q. -- in another store had been sent home?

9 MR. PETERSON: Okay. Does that tie it together, Your  
10 Honor? I was going to ask some questions about the previous  
11 emails.

12 JUDGE SOTOLONGO: I'll leave that up to you.

13 MR. PETERSON: Yeah.

14 Q. BY MR. PETERSON: All right. So moving to page 3, the  
15 June 15th email, is that a similar email to the June 12th  
16 email as far as who sent it and who the intended recipients  
17 were?

18 A. Yes.

19 Q. And why did you decide to send this second email just a  
20 few days after sending the first email?

21 A. Because to that point, we hadn't seen any tangential  
22 action to solve the issues that we were facing on the micro  
23 level in our store.

24 Q. The fourth bullet point on page 4, it says, we demand a  
25 detailed action plan to our tangible protections against

1 verbally violent customers. What was that referring to?

2 MS. SCHAEFER: Objection. Relevance.

3 JUDGE SOTOLONGO: Overruled. You can answer.

4 THE WITNESS: It's about workplace safety and management  
5 having systems in place to protect their employees who are on  
6 the floor who are often being harassed.

7 Q. BY MR. PETERSON: And it looks like you point out a  
8 number of grounds -- perceived grounds for that harassment.

9 MS. SCHAEFER: Objection. Leading.

10 JUDGE SOTOLONGO: That is leading.

11 MR. PETERSON: Okay.

12 Q. BY MR. PETERSON: It says one of the reports -- well,  
13 you see where it says multiple team members of that  
14 conversation with store leadership regarding racist, sexist,  
15 transphobic --

16 A. I do.

17 Q. -- and overly abusive regular customers. You see that?

18 A. I do.

19 Q. What was, what was the -- what racist actions were you  
20 referring to?

21 A. I was referring to customers on a team member --  
22 customers abusing verbally my fellow team members which  
23 happens quite a bit.

24 JUDGE SOTOLONGO: Verbally abusing black employees or --

25 THE WITNESS: Yes.



1 JUDGE SOTOLONGO: All right. Let me ask you this. So  
2 did that abuse have anything to do with employees wearing  
3 Black Lives Matter masks or other paraphernalia such as pins,  
4 pendants, whatever, or they were being abused just because --

5 THE WITNESS: They're black.

6 JUDGE SOTOLONGO: -- there was, there was some  
7 disagreement between the customer and the team member?

8 THE WITNESS: It's pretty overt racism that happens.

9 JUDGE SOTOLONGO: And by that, you mean what? The use  
10 of the "N" word or --

11 THE WITNESS: On occasions, yes. Yeah, and they're not  
12 being a system in place. That's what this bullet point is  
13 about. There not being a system in place at the store team  
14 leadership level to deal with customers that routinely came  
15 in and abused --

16 JUDGE SOTOLONGO: All right. But was any such abuse  
17 that you are describing, that you describe in this letter,  
18 directly the result of say a team member, a black team member  
19 wearing a Black Lives Matter --

20 THE WITNESS: No.

21 JUDGE SOTOLONGO: Okay.

22 Q. BY MR. PETERSON: Yeah. So I guess this is June 15th.  
23 Were you aware, were you aware of -- had you started wearing  
24 any Black Lives Matter messaging by that point?

25 A. June 15th, I hadn't wore it yet. My shift on the Monday

1 after the 19th, I was going to be wearing a pin.

2 Q. Okay. And then moving onto General Counsel's Exhibit  
3 50, page 5, an email dated June 18th, 2020. It appears that  
4 the sender has changed from the address, the handle of the  
5 sender has changed.

6 A. Correct.

7 Q. Do you what -- why that handle changed?

8 A. I was afraid.

9 Q. What were you afraid of?

10 A. That I was going to be fired if I was found out for  
11 having been the person that hit send.

12 Q. Okay. So the intent was to send this -- was the intent  
13 to send this anonymously?

14 A. The intent was to send this anonymously, yes.

15 Q. And then so this June 18th email, this comes just 3 days  
16 after the June 15th email. What was the purpose in sending  
17 this email?

18 A. To offer a slightly more conciliatory tone I think was  
19 necessary in the beginning, and then to restate our demands  
20 that had yet to be met, and to announce on a storewide level  
21 our intention to wear BLM in the workplace on June 19th as a  
22 collective action, a visible collective action.

23 Q. The first paragraph, you see where it says, we  
24 appreciate the efforts of store leadership has made to  
25 address our concerns. What is that referring to?

1 A. That was referring to a town hall meeting with Joseph  
2 Burton and employees. I believe that meeting took place on  
3 June 17th.

4 Q. Did you participate in that meeting?

5 A. Not that meeting, no. But, we were happy that the  
6 meeting happened because that was one of our demands.

7 Q. Okay. And then you've already testified about the --  
8 what was the -- I'm not sure if you testified about the third  
9 paragraph, encouraging -- where it says we encourage all team  
10 members to wear Black Lives Matter pins, masks, et cetera.

11 MS. SCHAEFER: Where are you looking?

12 MR. PETERSON: Page 6, third paragraph.

13 THE WITNESS: Yes. What was the question?

14 Q. BY MR. PETERSON: What was the purpose of that  
15 statement?

16 A. The purpose of this statement was to disseminate  
17 information, send it to everyone, that we were participating  
18 in a collective action and any employee that wanted to  
19 express solidarity with the folks over in New Hampshire and  
20 for fellow employees could. It was the fastest way to  
21 disseminate the information of the collective action.

22 Q. And to be clear, your intention was that this email  
23 would reach both management and -- was it your intention that  
24 this email reach both management and team members?

25 A. It was my intention, and I believe it succeeded.

1 Q. Okay. And then the -- still on page 6, the second to  
2 last paragraph, where it discusses protection from -- TM  
3 protection from abusive customers with tangible protocols.

4 MS. SCHAEFER: Objection to reading the document. Is  
5 there a question?

6 JUDGE SOTOLONGO: Sustained.

7 MR. PETERSON: Yeah, yeah, I'm going to ask a question  
8 about it. It's just a preface to a question.

9 Q. BY MR. PETERSON: What was -- what did you mean by  
10 tangible protocols workshop to implement a joint initiative  
11 between leadership and TMs?

12 A. I meant that we wanted tangible protocols for when  
13 situations arrive in the store that are racist, transphobic,  
14 unsafe, that there be systems in place to deal with them  
15 properly, fighting for workplace safety, yeah.

16 Q. In the last paragraph, it mentions -- where it says move  
17 forward to create a fair, more equitable workplace to avoid  
18 racism, sexism, transphobia and homophobia. What was -- what  
19 were you hoping to convey with that statement?

20 MS. SCHAEFER: Objection. Speaks for itself.

21 JUDGE SOTOLONGO: Sustained.

22 MR. PETERSON: All right. Move for the admission  
23 General Counsel's 50.

24 JUDGE SOTOLONGO: Any voir dire?

25 MS. SCHAEFER: Just a little bit, Your Honor.

1                                   **VOIR DIRE EXAMINATION**

2    Q.    BY MS. SCHAEFER:  Mx. Candrilli, do you have a Whole  
3    Foods email address?

4    A.    I believe so.

5    Q.    Do you -- what is that?

6    A.    I don't use it or check it.

7    Q.    And does every -- to your knowledge, does every South  
8    Street employee have an email address at Whole Foods?

9    A.    To my knowledge, yes, they do.

10   Q.    Okay.  Do you know if they check it?

11   A.    Probably not, no.  There are certain --

12   Q.    I'm sorry.  There wasn't --

13   A.    Yeah.

14   Q.    Sorry.  I just want to be clear.  You said that the  
15   individuals that drafted this email, the whole -- your name  
16   does not appear anywhere on this, correct?

17   A.    No.

18   Q.    And the individuals who drafted this email, their names  
19   don't appear anywhere on this, correct?

20   A.    No.

21   Q.    All right.  And you said it was two to three people that  
22   helped draft this?

23   A.    Yes.

24           MS. SCHAEFER:  So other than, you know, the concern  
25   about the first two emails not discussing Black Lives Matter

1 paraphernalia being worn, that's my objection to the  
2 document. But --

3 JUDGE SOTOLONGO: Okay. I'll admit it, and I'll just  
4 give it whatever relevance or lack of relevance to the parts  
5 that are not directly tied to the issue in this case.

6 **(General Counsel's Exhibit 50 received in evidence.)**

7 MR. PETERSON: Thank you, Your Honor.

8 THE WITNESS: Can I have some water, Your Honor?

9 JUDGE SOTOLONGO: Yes, I have some here.

10 THE WITNESS: Thank you. Is that clock correct?

11 JUDGE SOTOLONGO: No, that's been stuck on that hour for  
12 the last -- since I've been here.

13 MS. SCHAEFER: Your Honor, can we take just a short --

14 JUDGE SOTOLONGO: Yes.

15 MS. SCHAEFER: -- break?

16 JUDGE SOTOLONGO: Sure. Do you know where the restrooms  
17 are?

18 MR. PETERSON: Yes.

19 MS. SCHAEFER: I'm going to walk that way.

20 MR. PETERSON: I'll also walk that way.

21 **JUDGE SOTOLONGO: Off the record.**

22 **(Off the record from 11:16 a.m. to 11:21 a.m.)**

23 **JUDGE SOTOLONGO: Okay. Let's go back on the record.**

24 All right. Mr. Peterson, please resume.

25 MR. PETERSON: Thank you, Your Honor.

1                                   **DIRECT EXAMINATION (cont.)**

2     Q.    BY MR. PETERSON:  I want to go back to the pins, the  
3   Black Lives Matter pins that you were discussing earlier.  
4   When did you, when did you --

5           UNIDENTIFIED SPEAKER:  Sorry.

6           JUDGE SOTOLONGO:  We're on the record.

7           UNIDENTIFIED SPEAKER:  Oh, I'm so sorry.

8           JUDGE SOTOLONGO:  Go ahead.

9           MR. PETERSON:  Thank you, Your Honor.

10   Q.    BY MR. PETERSON:  The pins, when did you, when did you  
11   obtain the pins that you testified earlier?

12   A.    I obtained the pins on June 18th.

13   Q.    June 18th.  The same day of the last email?

14   A.    Correct.

15   Q.    What did you do with the pins after you received them?

16   A.    I disseminated them the next morning, not inside of the  
17   store.  I gave them to a coworker who was on the clock.

18   Q.    You gave them all to one coworker?

19   A.    I did, outside of the store.

20   Q.    And when did you, when did you first wear a pin  
21   yourself?

22   A.    The Monday following June 19th.  So, June 22nd.

23   Q.    And when you -- did you show up to the store wearing the  
24   pin on your hat as you described earlier?

25   A.    I did.

1 Q. Did you notice other employees wearing the pins when you  
2 reported to work on the 22nd?

3 A. I did.

4 Q. Were they the same pins that you had described as  
5 obtaining and giving to a colleague to disseminate?

6 A. Many were. It was the most prevalent version.

7 JUDGE SOTOLONGO: Were other employees that you observed  
8 wearing this pin, were they also wearing them on their caps  
9 or other places on their uniform or apron? You all wear  
10 aprons, right?

11 THE WITNESS: It's different for every department.

12 JUDGE SOTOLONGO: I see.

13 THE WITNESS: I wore it on my cap. Some people had it  
14 on their apron, on their shirt underneath the apron.

15 JUDGE SOTOLONGO: I see. Okay. But they were visible.

16 THE WITNESS: They were visible.

17 JUDGE SOTOLONGO: Okay. Go ahead.

18 Q. BY MR. PETERSON: And had you -- did you have any  
19 discussions with management, anyone from management on that  
20 day that you wore your pin to work for the first time?

21 A. Not on the first day that I wore the pin, no.

22 Q. How long after your first day did you have a discussion  
23 with somebody from management about wearing the pin?

24 A. My first discussion of note was on July 6th with an  
25 interim STL named Jenny Ross.



1 Q. And between June 22nd and July 6th, what was your --  
2 what kind of hours were you working? What was your shift in  
3 the summer of 2020?

4 A. 15 to 16 hours a week, always Mondays and Tuesdays, an  
5 opening shift which 6 a.m. to 2 p.m.

6 Q. And during that time period between June 22nd and July  
7 6th, did you continue to wear the pin on your hat as you  
8 described every day that you worked?

9 A. I did.

10 Q. Did you see other employees wearing pins, Black Lives  
11 Matter pins during that time period when you were working?

12 A. Many --

13 MS. SCHAEFER: Objection. Asked and answered.

14 JUDGE SOTOLONGO: It's all right. You can answer.

15 THE WITNESS: Yes.

16 Q. BY MR. PETERSON: And did you become aware of any  
17 managers objecting to employees wearing the pins?

18 A. Yes, I became aware of that.

19 Q. How did you become aware?

20 MS. SCHAEFER: Objection. Calls for hearsay.

21 JUDGE SOTOLONGO: Well, not if the person observed.

22 Tell us, how did you become aware of managers --

23 THE WITNESS: My coworkers were sent home from work and  
24 they reported that they had been sent home from work without  
25 pay in the middle of their shift for having worn it. This

1 began --

2 MS. SCHAEFER: Objection. I think the answer -- so the  
3 witness testified that on June 22nd, they first wore the pin  
4 and no one from management said anything to them until July  
5 6th. So the question was asking about other employees. So  
6 it's definitionally asking for hearsay.

7 JUDGE SOTOLONGO: Okay. Did you personally -- between  
8 June 22nd and July 6th, did you personally observe, not what  
9 you heard from other employees who reported -- did you  
10 personally observe any manager or store leader tell an  
11 employee that he or she or whichever pronoun you want to use,  
12 could not wear these pins or otherwise they would have to go  
13 home?

14 THE WITNESS: Did I see it happen?

15 JUDGE SOTOLONGO: Yes.

16 THE WITNESS: No.

17 JUDGE SOTOLONGO: Okay.

18 MR. PETERSON: Okay. Again I'm not offering this for  
19 the truth of the matter asserted but these are reports that  
20 they had received and that explained subsequent conduct.

21 MS. SCHAEFER: I'm not sure that's true, Your Honor. I  
22 think it's being offered for the fact.

23 JUDGE SOTOLONGO: Well, let me put it this way. Unless  
24 other employees testify or there is some other evidence that  
25 shows employees were being sent home and the reason, that

1 evidence is going to be -- has zero value. So he can offer  
2 it. He can ask about it but it's going to be a waste of time  
3 unless he pins it down, but he can offer it to show conduct  
4 or explain why the witness acted in a certain manner.

5 MS. SCHAEFER: I hear you. I just don't think that  
6 question is commenting (ph.) the witness' -- okay. Okay.  
7 All right.

8 MR. PETERSON: I'd like to ask my question.

9 JUDGE SOTOLONGO: Okay. Go ahead.

10 MR. PETERSON: It is coming.

11 Q. BY MR. PETERSON: So did you receive reports from anyone  
12 about employees being sent home during that time period  
13 between June 22nd --

14 A. Direct reports, yes.

15 Q. -- and July 6th?

16 A. Yes.

17 Q. Prior to June 22nd, had you heard of employees being  
18 sent home for wearing Black Lives Matter pins?

19 A. Yes.

20 Q. When did you first hear those reports?

21 A. June 19th.

22 Q. And so just to be clear. So you heard reports that  
23 people were sent home on June 19th. You worked subsequent  
24 shifts over the next week or 2, and you saw people wearing  
25 the pins openly. Is that correct?

1 A. Openly, yes.

2 Q. And you yourself also wore it openly?

3 A. I was.

4 Q. Did you take any action upon learning around June 19th  
5 that employees had been sent home for wearing the BLM pins?

6 A. Yes, we did. We, we being the Telegram created a  
7 graphic and the graphic was asking that customers call and  
8 ask why our fellow team members had been sent home for  
9 wearing Black Lives Matter pins.

10 JUDGE SOTOLONGO: When you say created a graphic --

11 THE WITNESS: Something that we could disseminate on  
12 social media.

13 JUDGE SOTOLONGO: Okay.

14 MR. PETERSON: This may help, Your Honor --

15 JUDGE SOTOLONGO: Okay.

16 MR. PETERSON: -- if I may approach the witness with  
17 what's been marked as General Counsel's 52.

18 JUDGE SOTOLONGO: Go ahead.

19 **(General Counsel's Exhibit 52 marked for identification.)**

20 Q. BY MR. PETERSON: Let me know when you've had a chance  
21 to take a look at that.

22 A. Yes.

23 Q. Do you recognize what's depicted on General Counsel's  
24 Exhibit 52?

25 A. I do recognize it.

1 Q. And can you tell us what it is?

2 A. It's a graphic that I made to communicate a picket that  
3 we were going to conduct outside of Whole Foods Market, South  
4 Street, on Sunday at 3 p.m. This was following the customers  
5 calling in to ask why people had been sent home that  
6 primarily happened on the Friday and Saturday previous.

7 Q. So this is a graphic, but it's not the one you were  
8 describing earlier?

9 A. It wasn't the first graphic.

10 JUDGE SOTOLONGO: How was this graphic depicted by  
11 General Counsel's Exhibit 52? How was it disseminated, if at  
12 all?

13 THE WITNESS: Primarily on Instagram. So we and I would  
14 send it to organizations with larger platforms. They would  
15 post it. People would post it on their stories. So it  
16 traveled quite quickly.

17 MR. PETERSON: Permission to approach the witness, Your  
18 Honor.

19 JUDGE SOTOLONGO: Okay.

20 **(General Counsel's Exhibit 51 marked for identification.)**

21 MR. PETERSON: Okay. I have what's been marked as  
22 General Counsel's Exhibit 51. And I'll just note for the  
23 record that it says page 3 of 3. I'm not offering pages 1  
24 and 2. I haven't offered this one yet, but just to explain  
25 the nature of the numbering.

1 Q. BY MR. PETERSON: Have you had a chance to look at  
2 General Counsel's 51?

3 A. I have.

4 Q. And do you recognize it?

5 A. I do.

6 Q. And can you tell us what it is?

7 A. This is the graphic to which I was referring that made  
8 the rounds I believe June 19th and June 20th primarily. I  
9 did not write this text. I certainly shared it at some  
10 juncture, but this was the call in campaign.

11 Q. Is this the graphic you were referring to earlier?

12 A. I think so. There's multiple graphics that encouraged  
13 customers to call in. This is the one I was thinking of in  
14 my mind's eye at that juncture.

15 JUDGE SOTOLONGO: You said you did not create this one?

16 THE WITNESS: I did not create this one, no. I know it.

17 JUDGE SOTOLONGO: But you saw it posted on Instagram or  
18 some other platform?

19 THE WITNESS: We were -- may I?

20 JUDGE SOTOLONGO: Yes.

21 THE WITNESS: Okay. We were sharing in a Telegram  
22 channel all of these graphics. If one person made it, I  
23 could just take the file and disseminate it myself. It was a  
24 collective space. So when I created this exhibit --

25 JUDGE SOTOLONGO: You mean General Counsel's Exhibit 52.

1 THE WITNESS: Meaning 52, 1 of 1, I would put it in the  
2 Telegram. People would take that file and they would also  
3 disseminate it.

4 JUDGE SOTOLONGO: Okay.

5 Q. BY MR. PETERSON: Okay. So these graphics arose in the  
6 context of the Telegram chat that you --

7 A. Absolutely.

8 Q. -- described?

9 JUDGE SOTOLONGO: Do you remember what date you first  
10 saw this on the Telegram?

11 THE WITNESS: June 19th or 20th.

12 JUDGE SOTOLONGO: Okay.

13 MR. PETERSON: Okay. I'll move for the admission of  
14 General Counsel's 51.

15 MS. SCHAEFER: No objection.

16 JUDGE SOTOLONGO: All right. 51 is admitted.

17 **(General Counsel's Exhibit 51 received in evidence.)**

18 MS. SCHAEFER: I'm just noting for the record that it's  
19 a -- the pagination of 3 of 3, which I know you described it  
20 for the court reporter.

21 JUDGE SOTOLONGO: Right, right.

22 MS. SCHAEFER: It's just a one page exhibit.

23 JUDGE SOTOLONGO: Are you going to ask some follow-up  
24 questions on 52?

25 MR. PETERSON: Yes.

1 Q. BY MR. PETERSON: Okay. Yeah, turning to General  
2 Counsel's 52. This is a graphic. Is this a graphic that you  
3 created?

4 A. It is.

5 Q. And why did you create this graphic?

6 A. I created this graphic because it was my job to do it.  
7 But, we created this graphic so that we could get as many  
8 people to show support as possible in the time crunch. We  
9 were upset that people had been sent home without pay for  
10 wearing BLM on the two previous days, and we were going to  
11 picket outside the store peacefully to show our displeasure  
12 about how it was being managed.

13 MR. PETERSON: Move for the admission of General  
14 Counsel's 52.

15 MS. SCHAEFER: I have no objection to it.

16 JUDGE SOTOLONGO: All right. So it's admitted.

17 **(General Counsel's Exhibit 52 received in evidence.)**

18 Q. BY MR. PETERSON: And General Counsel's 52, it  
19 advertises a protest sign on Sunday, June 21st?

20 A. It does.

21 Q. Is that 929 South Street address, is that the store --  
22 the address of the store that you worked at?

23 A. I think I thought it was. I don't know if it's 939 or  
24 929, but yes. Intended to be Whole Foods on South Street.

25 Q. Understood. Do you know if this protest took place?



1 A. It did take place. I was in attendance.

2 Q. You were in attendance. Can you describe what -- can  
3 you describe the protest generally?

4 A. The peaceful protest was more of a picket. So we were  
5 doing it, and it was about 15 employees I'd say, that's  
6 ballpark, but more like 50 bodies. We had talked to other  
7 groups, BLM being one of them and had them send folks to  
8 support. So it was about 2 hours on that Sunday that we were  
9 outside the store on the sidewalk engaging with customers and  
10 having conversations about what had been going on in the  
11 store. Everyone was pretty receptive. So a true picket  
12 line.

13 MS. SCHAEFER: I don't know. The labor lawyer in me is  
14 getting caught up with the true picket line phrase being  
15 used.

16 JUDGE SOTOLONGO: Yes, yes.

17 MS. SCHAEFER: Between us, we know that's -- are you --  
18 was it a picket line? I mean is it relevant to --

19 MR. PETERSON: Yeah, I mean --

20 MS. SCHAEFER: It's not really relevant to the inquiry.  
21 Can we all agree to that?

22 MR. PETERSON: Yeah, we're not -- I guess, I guess --  
23 what do you mean? I mean she's, you know, she's described  
24 it.

25 Q. BY MR. PETERSON: By picket, what do you mean I guess?

1 What do you mean by picket line?

2 A. Where they -- okay. Sorry.

3 JUDGE SOTOLONGO: Well, picketing -- you know what a  
4 picket it. A picket is a sign, a handheld sign.  
5 Traditionally in labor law, unions go on strike, for example.

6 THE WITNESS: Um-hum.

7 JUDGE SOTOLONGO: Employees hold, you know, a placard on  
8 a stick that says whatever it says. That's what -- and they  
9 march up and down in front of the premises or near the  
10 premises of the employer they're picketing.

11 THE WITNESS: Um-hum.

12 JUDGE SOTOLONGO: So when you say a picket line, all us  
13 labor lawyers here have an image of a union strike or  
14 something similar. And so when you say a picket line, can  
15 you describe for us exactly what was happening? Were people  
16 carrying placards and other signs and marching back and  
17 forth? Or tell us exactly what you observed.

18 THE WITNESS: No marching back and forth, but we were  
19 engaging customers as they were about to go in.

20 JUDGE SOTOLONGO: So you were standing, you were  
21 standing there. Was it a parking lot in front of the store?

22 THE WITNESS: It was in front of the doors.

23 JUDGE SOTOLONGO: In front of the doors, okay.

24 THE WITNESS: On the sidewalk.

25 JUDGE SOTOLONGO: On the sidewalk. And you were

1 carrying signs I assume -- some kind of signs?

2 THE WITNESS: I don't believe I was, but people were.

3 JUDGE SOTOLONGO: Some people were.

4 THE WITNESS: Um-hum.

5 JUDGE SOTOLONGO: Okay. And I don't know whether you  
6 have a photo of a sign. So I guess we'll let that happen.

7 Okay. And you said how many people were there altogether?

8 THE WITNESS: I'd say around 50.

9 JUDGE SOTOLONGO: Around 50. And of those, I believe  
10 you said about 15 were employees?

11 THE WITNESS: Fifteen -- there was a few past employees.

12 JUDGE SOTOLONGO: I see. Okay. And as customers would  
13 approach to enter the store, some of you -- some of the  
14 people gathered there would engage them in a conversation  
15 about what was happening?

16 THE WITNESS: Yes and a lot of customers were eager to  
17 know what was happening.

18 JUDGE SOTOLONGO: Were you distributing -- hand  
19 distributing flyers, for example, or anything like that?

20 THE WITNESS: We had no literature to distribute.

21 JUDGE SOTOLONGO: No literature. Okay. Very good. Go  
22 ahead, Mr. Peterson.

23 MS. SCHAEFER: Can I -- I know it's out of order, but  
24 may I just ask one more question?

25 JUDGE SOTOLONGO: Sure.

1 MS. SCHAEFER: Were you asking employees to come out of  
2 the store and stop working?

3 THE WITNESS: Not asking, but people did though, yeah.

4 Q. BY MR. PETERSON: Were there any speeches? Did you hear  
5 any speeches or give any speeches yourself during these  
6 protests?

7 A. I didn't give any speeches but speeches were made.

8 Q. Do you recall any of the subjects of the speeches?

9 A. Yeah, I had a coworker speak about having been sent  
10 home. This was a coworker that was sent home on 2  
11 consecutive days. She was the only instance of that I  
12 believe. So they were on the microphone. They discussed  
13 their displeasure about that but also about systematic issues  
14 inside of our store regarding --

15 MS. SCHAEFER: Again, I'm just going to object to  
16 hearsay.

17 JUDGE SOTOLONGO: Excuse me.

18 MS. SCHAEFER: Hearsay, Your Honor.

19 JUDGE SOTOLONGO: Well, overruled. I'll take it for the  
20 matter -- I'm not taking it for the truth of the matter about  
21 whatever they were saying, you know, protesting. I'm just  
22 taking it as background or the fact that there were speakers  
23 who were addressing some of the issues they had. Is that  
24 correct?

25 THE WITNESS: Correct.

1 JUDGE SOTOLONGO: Okay. And you were there and listened  
2 to those speakers I assume?

3 THE WITNESS: I was, yes.

4 JUDGE SOTOLONGO: And you said one speaker you were  
5 talking about was actually an employee?

6 THE WITNESS: A current employee.

7 JUDGE SOTOLONGO: A current employee, a current  
8 employee, and that employee described how -- being sent home  
9 for 2 consecutive days because they had worn a Black Lives  
10 Matter pin or --

11 THE WITNESS: Correct.

12 JUDGE SOTOLONGO: Okay. And that person mentioned other  
13 issues that they have at the store.

14 THE WITNESS: Not just them personally but, yes, they  
15 addressed systematic issues inside the store particularly I  
16 remember the speech talking about folks not having an  
17 opportunity to move up and get promotions.

18 JUDGE SOTOLONGO: Okay. So it wasn't just about being  
19 sent home for wearing Black Lives Matter pins. It was --  
20 they were addressing other problems they perceived at the  
21 store.

22 THE WITNESS: Correct. It was less about their  
23 particular pins and more about the systematic issues.

24 JUDGE SOTOLONGO: Okay. All right.

25 MS. SCHAEFER: Can I, just as a point, can you speak up

1 some. Every once in a while you just get like a little  
2 quiet.

3 JUDGE SOTOLONGO: Yeah, your voice drifts off a little  
4 bit. Yeah. Go ahead.

5 Q. BY MR. PETERSON: The systemic issues that this person  
6 was describing, systemic as pertaining to what?

7 A. Systematically not promoting black employees, giving  
8 black employees less desirable shifts, namely the overnight  
9 shifts, those types of things were discussed by this  
10 particular speaker who had been sent home twice  
11 consecutively.

12 Q. Do you recall if any of those issues had been discussed  
13 in the Telegram?

14 A. Yes, those issues had been discussed in the Telegram.

15 Q. Apart from the Telegram, had you discussed those issues  
16 with any of your coworkers during this time period?

17 A. Yes.

18 MR. PETERSON: All right. May I approach the witness,  
19 Your Honor?

20 JUDGE SOTOLONGO: Please do.

21 MR. PETERSON: Yeah, I believe I moved General Counsel's  
22 52.

23 MS. SCHAEFER: 51 --

24 JUDGE SOTOLONGO: Yes, you did. Both 51 and 52 have  
25 been admitted.

1 MS. SCHAEFER: Okay. Thanks. Sorry.

2 **(General Counsel's Exhibit 53 marked for identification.)**

3 MR. PETERSON: I'm showing the witness what's been  
4 marked as General Counsel's Exhibit 53.

5 Q. BY MR. PETERSON: Let me know when you've had a chance  
6 to review it.

7 MS. SCHAEFER: Your Honor, can we just go off the record  
8 one minute?

9 JUDGE SOTOLONGO: Yes. Go off the record.

10 **(Off the record from 11:45 a.m. to 11:46 a.m.)**

11 JUDGE SOTOLONGO: All right. Let's go back on the  
12 record.

13 All right. Please proceed.

14 MR. PETERSON: Thank you, Your Honor.

15 Q. BY MR. PETERSON: Have you had a chance to review this  
16 three page document?

17 A. I have.

18 Q. Do you recognize what's depicted in that exhibit?

19 A. I do. It's the protest/picket that occurred outside of  
20 Whole Foods on June 21st.

21 Q. And the first page is a website. Do you see that?

22 A. I do.

23 Q. Okay. Do you recognize this website?

24 A. I do.

25 Q. Can you tell us how you became familiar with this

1 website?

2 A. It's Flickr. The link itself was disseminated at some  
3 point after the protest. I forget where it appeared first  
4 but a photograph had been there, uploaded these photographs  
5 and then we became in possession of them.

6 Q. And possession of them, did that appear in the Telegram  
7 chat?

8 A. I don't know if the link was dropped in the Telegram  
9 chat. It stands to reason it would have been. I don't  
10 remember directly.

11 Q. Have you visited this website?

12 A. I have visited this website, yes.

13 Q. And are these accurate depictions of things that you  
14 observed? I guess, what is being depicted on pages 2 and 3?

15 A. The protest that occurred June 21st at 3 p.m. It is  
16 accurate to what I experienced there.

17 Q. You observed these scenes depicted in the exhibit?

18 A. Yes.

19 MR. PETERSON: Okay. Move for the admission of General  
20 Counsel's 53.

21 MS. SCHAEFER: Just one question on voir dire.

22 JUDGE SOTOLONGO: Go ahead.

23 **VOIR DIRE EXAMINATION**

24 Q. BY MS. SCHAEFER: This is not all that appears on the  
25 Flickr Account that you saw, correct?



1 A. I don't believe so.

2 MS. SCHAEFER: No objection.

3 JUDGE SOTOLONGO: All right. General Counsel Exhibit 53  
4 is admitted.

5 **(General Counsel's Exhibit 53 received in evidence.)**

6 **DIRECT EXAMINATION (cont.)**

7 Q. BY MR. PETERSON: Okay. So moving back to June 21st,  
8 your next shift as I understand it was June 22nd. Is that  
9 correct?

10 A. At 6 a.m., yes.

11 Q. And that's when you began wearing the pin at work  
12 yourself?

13 A. Yes.

14 Q. And between -- yeah, between June 22nd and July 9th, I  
15 believe -- was it July 9th?

16 JUDGE SOTOLONGO: July 6th.

17 Q. BY MR. PETERSON: July 6th.

18 A. Was the first conversation I had, yes.

19 Q. Did you observe other employees wearing -- I guess  
20 you've already --

21 JUDGE SOTOLONGO: Yes, you already asked that a couple  
22 of times.

23 Q. BY MR. PETERSON: And during that time period, did you  
24 receive any reports of some employees being sent home for  
25 wearing the BLM pins?

1 A. It slowed down. The people being sent home slowed down  
2 after the protest, and it just of recommenced, that  
3 corrective actions, miracles (ph.), were happening around  
4 when it happened to me in July.

5 Q. Okay. And what happened to you on July 6th?

6 A. July 6th, I was approached by interim STL, Jenny Ross.

7 JUDGE SOTOLONGO: You were approached by whom?

8 THE WITNESS: Jenny Ross, an interim STL. So they had  
9 been sent to our store to fill Joe Burton's role at least in  
10 a temporary sense. At that point, Joe Burton had been  
11 terminated.

12 JUDGE SOTOLONGO: Jenny -- what was that last name?

13 THE WITNESS: Ross, R-o-s-s, I believe.

14 JUDGE SOTOLONGO: Okay. And she was an acting team  
15 leader or --

16 THE WITNESS: Store team leader.

17 JUDGE SOTOLONGO: store team leader.

18 THE WITNESS: Yes.

19 JUDGE SOTOLONGO: Okay. Store team leader.

20 THE WITNESS: Um-hum.

21 Q. BY MR. PETERSON: Yeah, yeah. So, yeah. And what --  
22 where were you when you were --

23 A. I was on the floor which means that I was doing my job  
24 behind the seafood counter when she approached and opened a  
25 dialogue about the goings on at the store.

1 JUDGE SOTOLONGO: Okay. You're going to summarize. Why  
2 don't you tell us what she said, what you said in response,  
3 if anything.

4 THE WITNESS: Um-hum.

5 JUDGE SOTOLONGO: And if anybody else took part in that  
6 conversation, also tell us what that person said. So rather  
7 than just summarize, just tell us, she said this, I said  
8 that, she said this, I said that. Go ahead.

9 THE WITNESS: Okay. I expressed displeasure about how  
10 black employees had been held in low ranking positions, had  
11 been passed over for promotions that they were qualified for.  
12 That was a systematic issue, that people -- that employees of  
13 the store didn't feel protected by their store team  
14 leadership. And --

15 JUDGE SOTOLONGO: Well --

16 THE WITNESS: -- this is pertaining to --

17 JUDGE SOTOLONGO: Right, but first of all, she  
18 approached you first, right?

19 THE WITNESS: She approached me.

20 JUDGE SOTOLONGO: She spoke first, right?

21 THE WITNESS: Yes.

22 JUDGE SOTOLONGO: What did she first say before you  
23 responded with what you just said?

24 THE WITNESS: Hey, what's going on here? There's a lot  
25 going on here, is what she said essentially.

1 JUDGE SOTOLONGO: She said what's going on.

2 THE WITNESS: She was coming to me to find information  
3 about the goings on at the store over the previous --

4 JUDGE SOTOLONGO: She said what's -- okay. She said,  
5 hey, what's going on?

6 THE WITNESS: Essentially.

7 JUDGE SOTOLONGO: When she pointed to your black --  
8 addressed your Black Lives Matter, she said what's going on?

9 THE WITNESS: Correct.

10 JUDGE SOTOLONGO: Okay.

11 THE WITNESS: At that point in the conversation, we had  
12 not broached the subject of the BLM.

13 JUDGE SOTOLONGO: And you responded what you just told  
14 us about your concern about blacks not being promoted or  
15 being passed over for promotions and so forth?

16 THE WITNESS: Yes.

17 JUDGE SOTOLONGO: All right.

18 THE WITNESS: I was explaining the many reasons that we,  
19 the employees, were unhappy.

20 JUDGE SOTOLONGO: Okay. What happen then?

21 THE WITNESS: Then, she asked about the pin which I was  
22 wearing, and she said that it was regarding to the dress  
23 code, and that's the issue that was going to be raised and  
24 that she was raising, and I redirected and I said, this is a  
25 collective action. This is protected activity. It was a

1 very -- we knew what we were saying to one another.

2 JUDGE SOTOLONGO: Did you use those words, this is a  
3 collective action, this is protected activity?

4 THE WITNESS: I did.

5 JUDGE SOTOLONGO: You use those words.

6 THE WITNESS: Absolutely.

7 JUDGE SOTOLONGO: Okay.

8 THE WITNESS: Yes.

9 JUDGE SOTOLONGO: What happened then?

10 THE WITNESS: Then she reiterated that this is about the  
11 dress code and things have to be uniform, and I reiterated  
12 this is a collective action. I am participating in  
13 collected, concerted activity and that I wasn't going to stop  
14 doing that and that I believe my actions and the actions of  
15 my coworkers were protected. We were at a stalemate in the  
16 conversation. I liked her very much but she was doing her  
17 job.

18 Q. BY MR. PETERSON: Anything else you recall about that  
19 conversation?

20 A. Just that we both understood the roles that we had to  
21 play.

22 Q. Were you instructed to remove the pin?

23 A. On July 6th, by Jenny Ross, I was not.

24 Q. And you mentioned saying very specific terms,  
25 collective, collective action and protect activity. Where

1 did, where did you get those terms from?

2 A. Those terms and that knowledge came from kind of crowd  
3 sourcing on the Telegram. We were arming ourselves with  
4 knowledge. We wanted to learn what our rights were. We  
5 were, you know, reading the gig. We were reading labor laws.  
6 We were on the NLRB's website. So that's where that  
7 language, you know, first became apparent to all of us who  
8 are still in the Telegram chat and we knew pretty precisely  
9 that was the language that we were going to use when we were  
10 approached.

11 Q. At least at that point -- at least some employees --  
12 there were reports that at least some employees had been  
13 approached and asked to remove their masks. Is that correct?

14 MS. SCHAEFER: Objection. Leading.

15 THE WITNESS: Yes.

16 JUDGE SOTOLONGO: It is. When you hear objection,  
17 please stop. I said it's leading, Mr. Peterson. So rephrase  
18 your question.

19 Q. BY MR. PETERSON: At that point --

20 JUDGE SOTOLONGO: At what point, what did you do?

21 THE WITNESS: At that point --

22 JUDGE SOTOLONGO: If anything.

23 THE WITNESS: I continued wearing my pin and I finished  
24 my shift. The conversation with Jenny ended. It was a fine  
25 conversation.

1 Q. BY MR. PETERSON: And so did you wear the pin in your  
2 next shift?

3 A. I did which was the following morning, and it began at 6  
4 a.m.

5 Q. And what happened that day?

6 A. At around 11 o'clock, Matt, whose last name I can't  
7 remember at the moment, approached me and this is an ASTL,  
8 assistant store team leader, approached me and asked me  
9 pretty verbatim to take off my pin, and I said, no. And I  
10 said that I'm protected. This is protected, concerted  
11 activity. I'm doing this for workplace conditions. And then  
12 it ended. It was a very brief conversation.

13 Q. Did you remove your pin at that point?

14 A. I did not. I continued wearing my pin.

15 Q. And I'm just going to see if this -- if you can't  
16 remember Matt's last name?

17 A. Kowalski.

18 Q. Yeah.

19 A. Yeah.

20 JUDGE SOTOLONGO: What was the last name again?

21 MR. PETERSON: It's Kowalski.

22 Q. BY MR. PETERSON: Is that his last name?

23 A. Yeah, yeah. I just don't like mispronouncing people's  
24 names.

25 MS. SCHAEFER: K-o-w-a-l-s-k-i.

1 MR. PETERSON: Okay.

2 JUDGE SOTOLONGO: And you said he's an assistant store  
3 team leader, correct?

4 THE WITNESS: Correct.

5 JUDGE SOTOLONGO: So like a store manager basically?

6 THE WITNESS: Correct.

7 JUDGE SOTOLONGO: All right.

8 THE WITNESS: He would have been underneath Joe Burton  
9 and was at the time underneath Jenny Ross.

10 JUDGE SOTOLONGO: Very well.

11 Q. BY MR. PETERSON: And so you continued working. What  
12 happened next?

13 A. I continue working until around 1:30 p.m. when I  
14 received a phone call on the department phone. It was Matt,  
15 and he asked me to come upstairs to the conference room. I  
16 remember I asked can I just finish my shift, and he said, no.  
17 So then I went up to the conference room. Inside of the  
18 conference room was Matt and a man named Lamin Humma who had  
19 been sent as an interim STL as well with Jenny Ross. I  
20 believe he arrived a day later.

21 Q. And how did that -- was anyone else present?

22 A. There was no one else present besides the two of them  
23 and me. I walked in. I intentionally left the door open.  
24 They closed it. They sat at opposing ends of the table, and  
25 Matt asked if I reconsidered taking off my pin, and I said



1 no. I said I'm participating in protected, concerted  
2 activity. What I'm doing is protected. I'm doing this for  
3 my coworkers.

4 At some point, Lamin had chimed in, reiterated that this  
5 was about the dress code. I just said it again, it being  
6 protected, concerted activity. I'm doing this for my  
7 coworkers for better workplace conditions. And that was the  
8 end. They were taking notes. I was not alerted that this  
9 was a verbal warning nor an actual corrective action.

10 To be fair, I still don't know what it looks like on  
11 paper, that meeting that we had. They never told me. I  
12 walked away from that meeting. It seemed like it had come to  
13 its close. I went back down to the floor, worked a few more  
14 minutes and clocked out.

15 Q. Continuing -- were you continuing to wear the pin?

16 A. Yes, I did not take off my pin.

17 Q. And did you wear the pin to work after that?

18 A. I did. There was a period where I became very fearful  
19 that I was going to lose my job. It seemed staged that I  
20 start --

21 MS. SCHAEFER: I'm sorry. Yeah, can we get -- the  
22 question was if the witness continued wearing the pin.

23 JUDGE SOTOLONGO: Yes, and you answered the question.

24 THE WITNESS: Yes.

25 JUDGE SOTOLONGO: And if there's any further explanation

1 that needs to be elaborated, I'm sure Mr. Peterson will ask  
2 you. But don't elaborate. Just answer the question. You  
3 continued to wear the pin.

4 THE WITNESS: I did.

5 JUDGE SOTOLONGO: Okay.

6 Q. BY MR. PETERSON: At some point, did you stop wearing  
7 the pin?

8 A. I started wearing a necklace.

9 Q. How soon after the -- I believe that was July 7th. Was  
10 that the date of that meeting?

11 A. Um-hum. I don't remember exactly when I transitioned  
12 from wearing the pin that says Black Lives Matter to wearing  
13 the necklace that said BLM.

14 Q. Did any more discussions with management after July 7th  
15 about wearing either the pin or the necklace?

16 A. I had no conversations with management after that point.  
17 I docketed my claim with the NLRB on July 8th. It arrived --

18 MS. SCHAEFER: Your Honor, the question was about  
19 conversations. I appreciate the --

20 THE WITNESS: I'm so sorry. I'm trying to.

21 MS. SCHAEFER: It's okay --

22 THE WITNESS: I'm doing the best I can.

23 JUDGE SOTOLONGO: All right. So let me back up for just  
24 a second. So I can understand. So on July 7th, you had a  
25 meeting with managers in the conference room.

1 THE WITNESS: Um-hum.

2 JUDGE SOTOLONGO: You were again asked if you wanted to  
3 remove it, and you said no. Then you were asked to clock  
4 out?

5 THE WITNESS: I was not asked to clock out.

6 JUDGE SOTOLONGO: You were not --

7 THE WITNESS: I said -- can I return to the floor? Is  
8 this conversation over? And they said, yes.

9 JUDGE SOTOLONGO: Okay. So you -- they didn't tell you  
10 to clock out. You told you were not going to remove your  
11 pin, and you went back to the floor. So then you said you  
12 clocked out. Is that after your shift was over?

13 THE WITNESS: Yes.

14 JUDGE SOTOLONGO: Okay. That's why I was -- I thought  
15 you had just been told to leave the store because you didn't  
16 want to remove your pin. Your shift was over.

17 THE WITNESS: Nearly. I think they expected the  
18 conversation to be longer than it was.

19 JUDGE SOTOLONGO: Now, we're on the same page. All  
20 right.

21 THE WITNESS: Yes.

22 JUDGE SOTOLONGO: That's what I was misunderstanding.  
23 Go ahead.

24 Q. BY MR. PETERSON: Any estimate as to how many times you  
25 wore the pin or the necklace that you described after July

1 7th at work?

2 MS. SCHAEFER: Objection. Compound question.

3 JUDGE SOTOLONGO: It is compound. Break it down please.

4 Q. BY MR. PETERSON: Do you recall about how many times you  
5 wore the pin, the Black Lives Matter pin to work after that  
6 conversation on July 7th?

7 A. Twice a week for 2 to 3 weeks, the pin.

8 Q. And then, and then when did you -- do you recall when  
9 you started wearing the necklace?

10 A. I believe late July, early August, and I wore that for  
11 along time. I don't know how long.

12 Q. A period of weeks or months or --

13 A. Months.

14 Q. And did anyone from Whole Foods ever notify you that you  
15 had -- that there was any formal disciplinary action being  
16 taken against you, you know, in that conversation that you  
17 had on July 7th?

18 A. I had no information about the conversation and what it  
19 meant for me.

20 Q. Okay. Jumping back a bit, the emails you sent to town  
21 halls -- town hall meetings.

22 A. Yes.

23 Q. Did you attend any meetings that you recall falling in  
24 that town hall framework?

25 A. I attended two town hall meetings in that framework, the

1 first being led by Travis Phaup.

2 Q. Okay. And do you recall the date when this meeting  
3 occurred?

4 A. Very soon after the protest. My instinct is saying the  
5 23rd of June, around there.

6 Q. So sometime after the protest?

7 A. Yes.

8 Q. And whose -- who is Travis Phaup?

9 A. As I understand him a higher up to our store, someone in  
10 management with the Mid Atlantic Region, but not the boss  
11 boss.

12 Q. And did this meeting occur during one of your shifts?

13 A. It did not.

14 Q. Yeah, when did --

15 A. Yes.

16 Q. So you were not working on the --

17 A. I don't believe that I was working on the day that it  
18 happened for the first one. I don't -- but I know you had  
19 the option as any employee whether you worked that day, to  
20 clock in for these meetings and to clock out, yeah.

21 Q. How did you find out that these meetings were taking  
22 place?

23 A. Placards next to the time clock, and then we in the  
24 Telegram chat, of course, alerted one another, so that if  
25 someone wasn't work, like often me, I would be able to get

1   there if I wanted to.

2   Q.   Was it your understanding that the placards had been  
3   placed by Whole Foods?

4       MS. SCHAEFER:  Objection.  Relevance.

5       JUDGE SOTOLONGO:  Placards meaning a sign by the time  
6   clock.

7       THE WITNESS:  Sign by the clock.

8       JUDGE SOTOLONGO:  What did the sign say?

9       THE WITNESS:  To the effect of we're having a meeting on  
10   the top of the parking deck to discuss XYZ.  I don't know if  
11   it said to discuss what.  A town hall meetings happening and  
12   there was a sign in sheet I think too, because it the  
13   beginnings of COVID protections.  It couldn't be too tense at  
14   any given time.

15   Q.   Okay.  So you believe you were not working that day but  
16   you reported to attend this meeting?

17   A.   Yes, I could check if it was a Tuesday.  I think it  
18   might have been.

19   Q.   And who -- how many people were present at the meeting?

20   A.   There were different time slots.  So the one that I  
21   attended with Travis Phaup, I don't know, 8 to 10.  It was  
22   capped because of COVID, but there were different time slots.  
23   Different employees went to each.

24   Q.   And other than Travis Phaup, who were the other -- were  
25   there any other management representatives present?

1 A. There was a woman with Travis. I believe her first name  
2 is Michelle. I imagine she was also Mid Atlantic leadership.  
3 I don't know her last name off the top of my head.

4 Q. And the other eight -- among the eight people, were  
5 those employees?

6 A. Yes.

7 Q. How long did the meeting last?

8 A. A long time, 2 plus hours. It ran over what allotted  
9 slot we had been given.

10 Q. And do you recall how the meeting began?

11 A. It was an opportunity to air grievances. So employees  
12 began doing that.

13 Q. And when you say -- how did you know it was an  
14 opportunity to air grievances?

15 A. I don't know how I knew other than it was.

16 Q. Did -- do you recall Travis Phaup saying anything to  
17 begin the meeting?

18 A. Directly, no. I think it was an open conversation  
19 between employees and management.

20 Q. And did you, did you speak during this meeting?

21 A. I did.

22 Q. And what do you recall saying?

23 A. I was frustrated at the time. So I discussed a lot of  
24 grievances with the structure of Whole Foods and how people  
25 had been passed over for these promotions, how it just wasn't

1 equitable workspace, how people were getting locked outside  
2 of the building outside of curfew. The pins, of course, were  
3 discussed at that juncture. I believe what Travis was  
4 communicating was that there wasn't a set way to deal with  
5 the pins yet. So there was going to be a lull in how we were  
6 handled. So it seemed like they didn't know what to do  
7 regarding the pins. And that one day we would be reprimanded  
8 for them, but that day was not June 23rd.

9 Q. This is your impressions or this is what Travis Phaup  
10 was saying?

11 A. Travis said at some point, we're not cracking down yet.  
12 So that was my impression from him saying.

13 JUDGE SOTOLONGO: Those were his words?

14 THE WITNESS: I believe so, yeah.

15 Q. BY MR. PETERSON: And when you said the concerns that  
16 you were raising, systemic concerns about people not getting  
17 promoted and the other items you mentioned, did you say  
18 people or were you referring to a specific group of people?

19 A. Specifically referring to my black coworkers. I at one  
20 point definitely specifically said that most of the overnight  
21 team members are black. Those are our less desirable shifts,  
22 et cetera, et cetera. And then I related it to the doors  
23 being, you know, boarded up, the door locked outside of  
24 curfew, and that being dangerous and negligent.

25 Q. Do you recall any other comments that came up that any



1 of the other -- your coworkers raised?

2 A. There were plenty of issues raised about Joe Burton and  
3 his personal conduct and how it related to workplace safety.  
4 So inappropriate moments, often with --

5 MS. SCHAEFER: Your Honor, can we just -- I guess a  
6 relevance objection. Can we, you know, the matter we're here  
7 on is wearing the Black Lives Matter pins. We had testimony  
8 about how that was discussed at the hearing, or I'm sorry, at  
9 the town hall. So I think we're beyond the scope of the  
10 complaint at this point.

11 MR. PETERSON: I'll be happy to focus the question --

12 JUDGE SOTOLONGO: Yes.

13 MR. PETERSON: -- a little bit more. Obviously this was  
14 a 2 hour meeting --

15 MS. SCHAEFER: Yeah, it's tough.

16 MR. PETERSON: -- and not all of it is particularly  
17 relevant but.

18 Q. BY MR. PETERSON: So when the discussion about the Black  
19 Lives Matter pins, was there any other than the things that  
20 you mentioned about race, you know, race, racial issues and  
21 inequities for black people, did any other employees raise  
22 similar concerns that you recall?

23 A. Yes, regarding workplace safety and how our boss at the  
24 time was an unsafe man and put our coworkers in unsafe  
25 positions. So that is regarding workplace safety and that

1 was raised a lot.

2 Q. Okay.

3 JUDGE SOTOLONGO: Have you previous or before this  
4 occasion, have you had other meetings with Mid Atlantic  
5 management before?

6 THE WITNESS: No, this was the first one that I went to.  
7 There wasn't a large town hall with Mid Atlantic leadership  
8 before the one we're describing now. There was one  
9 following.

10 JUDGE SOTOLONGO: Okay. Go ahead.

11 Q. BY MR. PETERSON: Okay. Any other details you recall  
12 about workplace issues or Black Lives Matter pins being  
13 discussed?

14 A. Not off the top of my head. I'm sure it was.

15 Q. Did you attend any other meetings of a similar town hall  
16 style?

17 A. I did.

18 Q. When was that in relation to the meeting you just  
19 described?

20 A. I don't know of -- my gut is that it was June 29th. We  
21 could check back on that, almost a week later I think. And  
22 this was with Scott Allshouse who was definitely the boss in  
23 my understanding of the Mid Atlantic Region.

24 Q. And is that Scott Allshouse?

25 A. Yes. Travis Phaup was also there.

1 Q. Any other management representatives you recall being  
2 present?

3 A. I think Michelle was there as well.

4 Q. Where did this meeting take place?

5 A. Also on the roof. Top of the parking deck.

6 Q. Did you find out about it in a similar manner as the  
7 previous meeting you described?

8 A. I did.

9 Q. Do you remember if you were working that day?

10 A. I don't remember. I was there.

11 MS. SCHAEFER: I think we're having trouble hearing you.  
12 Just remember to keep your voice up. I'm sorry.

13 Q. BY MR. PETERSON: About how many -- were there other  
14 employees present?

15 A. Yes.

16 Q. About how many?

17 A. Similar to the last meeting, 8 to 10. There were slots  
18 that you could sign up for. So Scott had meetings with  
19 compartments of employees all day.

20 JUDGE SOTOLONGO: What was the date of the second  
21 meeting approximately?

22 THE WITNESS: I think June 29th.

23 JUDGE SOTOLONGO: Okay.

24 Q. BY MR. PETERSON: And what -- about how long did this  
25 meeting last?

1 A. This was another long meeting. I definitely think I was  
2 there at least for 2 hours but again slots. So when I left,  
3 others came in.

4 Q. And who did the speaking for management?

5 A. Scott Allshouse.

6 Q. Do you recall what he said?

7 A. I recall that he also said that he was going to have to  
8 take a firm stance on the pins soon, and that everyone had to  
9 be uniform and this had to be corrected in the near future  
10 regarding the pins.

11 Q. Did you respond at all yourself?

12 A. I did. I told them that the pins were about workplace  
13 conditions at the micro level, our store. Reiterated what  
14 that meant in terms of our coworkers not getting raises, not  
15 feeling safe at work, information not being disseminated, and  
16 he said this is a dress code thing. And I said my speech  
17 again. So kind of in a stalemate.

18 Q. I know you want to summarize your speech, but can you  
19 recall what --

20 A. In the meeting on June 29th, I used the phrase, us  
21 wearing these pins is a collective action. This is  
22 protected, concerted activity, to which he responded dress  
23 code, and that's the stalemate that I'm describing. Other --  
24 we discussed -- I don't know how to like offer some things.

25 Q. Yeah. I mean so I'm asking you, yeah, what you --

1 A. Yeah.

2 Q. -- said, you recall, and you told us what you said and  
3 you're referring to coworkers' --

4 A. Um-hum.

5 Q. -- safety and opportunities. And again I'll ask, was  
6 this -- were you referring to -- did you mention a specific  
7 group of coworkers that you, that you had these concerns  
8 about?

9 A. Yes, I specifically mentioned my black coworkers. We  
10 brought up COVID protections and how it pertains to our older  
11 black coworkers. So.

12 Q. And do you recall any other employees bringing up issues  
13 related to race or safety?

14 A. Many. It was the main theme of the conversation, at  
15 least the slot that I had attended on the roof with Scott  
16 Allshouse. A lot of discussion about a banner that had been  
17 hung up outside the store. It was a large prong of the  
18 conversation.

19 MR. PETERSON: Permission to approach the witness.

20 JUDGE SOTOLONGO: Please do.

21 **(General Counsel's Exhibit 54 marked for identification.)**

22 Q. BY MR. PETERSON: I'll give you a chance to look at  
23 what's been marked as General Counsel's 54, and let me know  
24 when you have seen it.

25 A. I have reviewed it, yes.

1 Q. Do you recognize what's depicted in General Counsel's  
2 54?

3 A. I do recognize it.

4 Q. And how do you recognize it?

5 A. I recognize it as one of my ASTLs directing one of my  
6 then coworkers on how to put this banner in front of the  
7 Whole Foods Market on South Street store.

8 Q. And have you seen this? Did you see this event  
9 occurring?

10 A. I did.

11 Q. Do you know who took the photograph?

12 A. To be honest with you, I forget who took it. It could  
13 have very well been me. There were multiple photographs of  
14 the same situation.

15 Q. And who -- whose in -- so you were -- you witnessed  
16 this --

17 A. Yes.

18 Q. -- taking place?

19 A. Um-hum.

20 Q. Who is depicted in that photograph?

21 A. Jaime Kotmair and a man whose name is Turrell (ph.), my  
22 then coworkers, who was later terminated.

23 Q. Are they managers or team members?

24 A. Turrell, on the ladder, is a team member. Jaime is an  
25 ASTL, assistant store team leader.

1 Q. And you mentioned in this -- in the meeting that you  
2 were describing with Mr. Allshouse, that a banner was being  
3 discussed?

4 A. Yes.

5 Q. Is this the banner issue that was being discussed during  
6 that town hall meeting?

7 A. This is the banner issue that was being discussed, yes.

8 Q. And what was being discussed about the banner during the  
9 meeting with Mr. Allshouse?

10 A. We were asking why this banner was hanging when  
11 employees couldn't wear Black Lives Matter in the workplace.  
12 It seemed like incongruous messaging being put forth.  
13 Additionally, we were upset and saying it's hypocritical to  
14 hang this on such a racist store.

15 MS. SCHAEFER: Objection.

16 THE WITNESS: And that was a lot of the discontent.

17 MS. SCHAEFER: I'm sorry. I object. I believe again  
18 we're describing things. It's fine. I'll withdraw it. It's  
19 fine.

20 JUDGE SOTOLONGO: Okay.

21 Q. BY MR. PETERSON: These are -- as I understand your  
22 testimony, these are things that were brought up to  
23 Mr. Allshouse during the meeting --

24 A. Yes.

25 Q. -- this issue with the banner that you're describing?

1 A. Yes. We asked a lot of questions about why it had been  
2 sent to our store, and he ultimately revealed that it was his  
3 decision, saying something to the effect of it was my idea to  
4 hang this outside the store which is where we expressed that  
5 we'd like it taken down.

6 Q. And when -- do you recall when in relation to the June  
7 29th meeting that you're describing that you saw this banner  
8 being hung?

9 A. I believe 3 days previous.

10 Q. Was there any discussion during that meeting about any  
11 further discussion? Did Scott Allshouse say anything about  
12 the banner?

13 A. Yes. So instead of just taking our word for it, in the  
14 instance of the meetings, since so many slots it happened, we  
15 had to vote to remove the banner, if that was --

16 MS. SCHAEFER: Objection, non-responsive to the  
17 question. It was about what Scott Allshouse said.

18 THE WITNESS: He said he wasn't going to just take it  
19 down.

20 JUDGE SOTOLONGO: Well, you need to respond to just the  
21 question and then stop and wait for the next question.  
22 Again, you're narrating. You're going way beyond the scope  
23 of the question and you're drawing objections. So I would  
24 ask you to just answer the question and stop.

25 MR. PETERSON: Yeah.



1 Q. BY MR. PETERSON: Did Scott say -- during that meeting,  
2 did Scott say anything else about the -- did he -- when --  
3 did -- anything else about the banner other than what you  
4 testified to?

5 A. He said it would be taken down if we voted to do it.

6 Q. And was there a vote held during that meeting?

7 A. Not during the meeting. Electronically.

8 Q. When in relation to the meeting was that vote held?

9 A. I don't remember exactly, but after.

10 Q. And did the banner remain hung at the store?

11 A. No, it didn't. It was taken down.

12 Q. How soon after the meeting?

13 MS. SCHAEFER: How is that relevant, Your Honor?

14 JUDGE SOTOLONGO: Yeah.

15 Q. BY MR. PETERSON: Yeah. So there's -- so again this is,  
16 you know, these employees are bringing up workplace concerns  
17 related to racial equality and fairness. They're actually  
18 engaging in some degree of bargaining with their Employer,  
19 and --

20 JUDGE SOTOLONGO: All right. But just this one and move  
21 on. It's just -- you're soliciting a lot of information that  
22 is not really relevant, you know. And so, you know, move on.

23 Okay. Do you remember what the question was? You said,  
24 Scott -- what is Scott's last name?

25 THE WITNESS: Allshouse, Allshouse.

1 JUDGE SOTOLONGO: You know, you want to take a vote on  
2 it, and then the employees took a vote electronically, and  
3 the banner was taken down.

4 THE WITNESS: That's what happened.

5 JUDGE SOTOLONGO: Okay.

6 MR. PETERSON: Move for the admission of General  
7 Counsel's 54.

8 JUDGE SOTOLONGO: Any objection?

9 MS. SCHAEFER: No.

10 JUDGE SOTOLONGO: All right. 54 is admitted.

11 **(General Counsel's Exhibit 54 received in evidence.)**

12 JUDGE SOTOLONGO: Now, in this meeting where the topic  
13 of the banner was discussed, approximately what day was that  
14 again?

15 THE WITNESS: The 29th I believe.

16 JUDGE SOTOLONGO: Okay. So altogether how long was the  
17 banner up for?

18 THE WITNESS: Approximately somewhere 3 and 7 days.

19 JUDGE SOTOLONGO: Okay.

20 Q. BY MR. PETERSON: Prior to wearing the, prior to wearing  
21 the pins at work, had you observed any -- what did you  
22 observe regarding the dress code and enforcing the dress  
23 code?

24 A. My observation of the dress code was that it was pretty  
25 lackadaisical.

1 Q. And do you have any specific examples?

2 MS. SCHAEFER: Your Honor, what's the relevance? We've  
3 had this discussion in Boston, and so I just don't want to  
4 start down this path in Philadelphia. I guess I just want to  
5 raise the same objection as in Boston.

6 MR. PETERSON: Submitted case law authority, one of  
7 their defenses is that they have a, you know, that they're  
8 maintaining a public image and lax enforcement of the dress  
9 code is --

10 JUDGE SOTOLONGO: Well, I'll allow it. I'll allow some  
11 leeway but, you know, keep it within bounds and don't spend a  
12 lot of time on expansive discussion with, you know, every hat  
13 ever worn by an employee that, you know, there are hats under  
14 our hats, okay. And don't -- just stick to it and keep it  
15 short.

16 MR. PETERSON: Yeah.

17 Q. BY MR. PETERSON: What are some examples of dress code  
18 violations that you had seen prior to June --

19 A. Prior to June --

20 Q. -- of 2020?

21 A. Prior to June 2020, I had seen a ton of enamel pins on  
22 aprons namely, sports teams, Pokemon, et cetera, et cetera,  
23 pronoun pins, plenty of, you know, bling as you would say.  
24 It was just a part of every day wear. It was on their  
25 aprons.

1 Q. What are pronoun pins?

2 A. Pronoun pins just state the person's pronouns. So, for  
3 me, if I were to wear one, it would say they, them, theirs.  
4 That's what it said.

5 Q. And how prevalent were your pronoun pins, for example?

6 A. Pretty relevant.

7 Q. How prevalent?

8 A. Prevalent, relevant, both, yeah. I did not wear them  
9 but many other coworkers did.

10 JUDGE SOTOLONGO: What would be an example of one of  
11 these pronoun pins, for example? I haven't seen one.

12 THE WITNESS: It would say they, them, theirs, with --

13 JUDGE SOTOLONGO: They, them, theirs?

14 THE WITNESS: Yep, so those would be my pronouns. I  
15 won't guess yours.

16 JUDGE SOTOLONGO: Okay. So the pin would say they,  
17 them, theirs?

18 THE WITNESS: Yeah.

19 JUDGE SOTOLONGO: Okay. All right.

20 THE WITNESS: These pins were being worn.

21 Q. BY MR. PETERSON: The pronouns, are those, are those --  
22 is it your understanding that those are related to somebody's  
23 gender identity?

24 A. Yes.

25 Q. Do you see any other symbols or messages? Did you see

1 any flags?

2 A. A ton. There were employees that had a full apron of  
3 pins. So.

4 Q. Any -- did you see any pins or paraphernalia that  
5 related to gay pride, for example?

6 A. Yes.

7 Q. Can you tell us what you saw?

8 A. Rainbows, you know. Whether it be in the shape of a  
9 rainbow or another shape, but rainbows, et cetera, et cetera.  
10 Just a lot of pins. It wasn't enforced at all.

11 Q. And over what time period leading up to June 2020, had  
12 you observed these?

13 A. Most of my observation of that would have been in the  
14 first year of my employment. So I started I believe in  
15 August 2018, and I didn't transfer into seafood for a year.  
16 So most of the pins and the lackadaisical enforcement of  
17 dress code I was seeing in the front end customer service.

18 Q. Were you surprised to learn that Whole Foods was taking  
19 its position about the Black Lives Matter pin?

20 MS. SCHAEFER: Objection. Relevance.

21 JUDGE SOTOLONGO: Sustained.

22 Q. BY MR. PETERSON: Prior to, prior to June 2020, would  
23 you have expected Respondent to enforce the dress code  
24 against Black Lives Matter pins?

25 A. No.

1 MR. PETERSON: No further questions.

2 JUDGE SOTOLONGO: All right. Mr. Ritterman, any  
3 questions of the witness?

4 MR. RITTERMAN: Yes, Your Honor.

5 JUDGE SOTOLONGO: Okay. Please go ahead.

6 MR. RITTERMAN: Thank you.

7 JUDGE SOTOLONGO: Then after your direct is over, then  
8 we will take a break, a lunch break, and then you can have  
9 your affidavit and so forth, extra time if necessary. So --  
10 all right. Go ahead, Mr. Ritterman.

11 **DIRECT EXAMINATION**

12 Q. BY MR. RITTERMAN: When Scott Allshouse had a  
13 conversation with you about wearing the pin, to what extent,  
14 if any, did you attribute your wearing the pin to concerns  
15 about how people were being treated in the store?

16 A. Wholly.

17 Q. Okay.

18 MS. SCHAEFER: I'm sorry. What was the answer? I  
19 didn't hear.

20 JUDGE SOTOLONGO: What was the answer?

21 THE WITNESS: Wholly, completely.

22 MR. RITTERMAN: With a W.

23 Q. BY MR. RITTERMAN: And to what extent, if any, did you  
24 discuss the store's failure to respond to employees' concerns  
25 about racist comments?

1 A. It was a large part of my discussion with Scott  
2 Allshouse.

3 Q. And to what extent, if any, did you attribute your  
4 wearing the Black Lives Matter pin to that issue?

5 A. Very much so.

6 Q. And to what extent, if any, did you discuss with  
7 Mr. Allshouse the treatment of black employees and that had  
8 to have one-on-one conversations with the store manager?

9 A. I discussed that.

10 Q. And to what extent, to what extent, if any, did you  
11 attribute your wearing the Black Lives Matter pin to that  
12 issue?

13 A. At least in part.

14 Q. And prior to wearing a Black Lives Matter pin, did Scott  
15 Allshouse ever give you a forum to address your concerns  
16 about race in the store?

17 A. No.

18 Q. And when you had the conversation with Jenny, which was  
19 before Scott Allshouse, correct?

20 A. After.

21 Q. After. Oh. And at the point you were having a  
22 conversation with Scott Allshouse, to what extent, if any,  
23 did you believe there had been consequences to other  
24 employees for wearing the Black Lives Matter pins?

25 A. Very much so.

1 Q. And to what extent, if any, did employees upon facing a  
2 consequence for wearing a pin, complain to you about it?

3 A. They did.

4 Q. And were -- when they did this, were they angry, upset,  
5 agitated or were they just talking very calmly about it?

6 A. I suppose it was relaying facts. They were upset that  
7 they had been sent home from work, but we were keeping the  
8 dates on that.

9 Q. And then how soon in proximity to their being sent home  
10 were they telling him this?

11 A. Immediately via the Telegram. So.

12 Q. So this was the moment it was happening though.

13 A. Yes.

14 MR. RITTERMAN: Your Honor --

15 JUDGE SOTOLONGO: So, for lack of a better -- this is  
16 like a chat room. This Telegram platform you're describing  
17 was like a chat room where employees exchanged information.  
18 Would that be correct?

19 THE WITNESS: Very quickly, live all the time.

20 JUDGE SOTOLONGO: And so it was as things were  
21 happening.

22 THE WITNESS: Yes.

23 JUDGE SOTOLONGO: Is this something that employees could  
24 access, for example, on their cell phones at work during  
25 their breaks, for example?



1 THE WITNESS: Certainly during their breaks, yes.

2 JUDGE SOTOLONGO: Okay. So this would be -- this  
3 platform would be ready and accessible to anybody who was  
4 signed onto this --

5 THE WITNESS: Yes.

6 JUDGE SOTOLONGO: -- platform?

7 THE WITNESS: Yes. It's an encrypted team messaging  
8 platform.

9 JUDGE SOTOLONGO: Okay. I see. All right. Sorry.

10 MR. RITTERMAN: Your Honor, in that case, I would like  
11 these reports as presence sense impressions to be admissible  
12 as exceptions to the hearsay rule. As they're reporting  
13 something as it's happening and while under the -- and also  
14 as an excited utterance.

15 JUDGE SOTOLONGO: I'm not sure excited utterance would  
16 qualify. Present sense impression --

17 MS. SCHAEFER: Yeah, I don't -- I'm not -- is there an  
18 exhibit or some sort of -- what's the --

19 MR. RITTERMAN: I'm asking Your Honor -- I'm moving for  
20 reconsideration of Your Honor's ruling to exclude on a  
21 hearsay basis, as it's actually an exception to the hearsay  
22 rule, a very well established one, even allowable under  
23 proffer in a confrontation clause in criminal context.

24 MR. FORMAN: Your Honor, we have another unrelated  
25 objection, or excuse me, related objection. This witness is

1   testifying that these excited utterances or contemporaneous  
2   statements were made in a Telegram chat. We had partial  
3   production of a Telegram chat. We were only given what the  
4   Charging Party screenshot retained and then produced. We  
5   don't have the entire Telegram chat. We've been told it  
6   doesn't exist.

7           So to the extent this witness is testifying about  
8   conversations that they allegedly had with others that were  
9   not produced, they should be precluded from discussing those,  
10   and the testimony should be stricken from the record for  
11   failure to comply with our subpoena and to preserve that  
12   relevant evidence which they did not.

13          MR. RITTERMAN: Your Honor, whether it's done by  
14   Telegram chat or even by word of mouth, there would be  
15   nothing to produce. Present sense impression is admissible.

16          MR. FORMAN: They were under an obligation to preserve  
17   relevant evidence. They did not. They produced partial  
18   parts of evidence and now they seek to testify about what  
19   allegedly was stated in this evidence they did not produce.

20          MR. RITTERMAN: We produced everything we could.

21          MR. FORMAN: Still, they had an obligation to retain it.  
22   They did not.

23          MS. SCHAEFER: The subpoena in February.

24          JUDGE SOTOLONGO: All right.

25          MR. PETERSON: There's not a spoliation issue. I'm

1 tangentially involved in the subpoena production. The  
2 Telegram chat has an expiration. It automatically expires  
3 and these employees produced -- they took a bunch of snap  
4 chat photos as I understand it during the NLRB investigation  
5 for the -- before any complaint issued, and --

6 JUDGE SOTOLONGO: But here's -- listen.

7 MS. SCHAEFER: Hang on a minute. Before we -- the  
8 witness testified they filed a charge in July of 2020. The  
9 Board's docket letter informs Charging Parties immediately  
10 upon filing a charge of spoliation and the need to preserve  
11 evidence. So it's a little self-serving for the Board to  
12 say, well, we got what we wanted from the witnesses, you  
13 know, for our investigation. That said, I still don't  
14 think -- let's -- I'm just not sure that the request that's  
15 before Your Honor is --

16 JUDGE SOTOLONGO: Let's put it this way. It's really  
17 tangential relevance. The fact is, you know, it is not --  
18 what Mx. Candrilli has revealed is really not at issue here.  
19 You know, it is all that I take from this testimony is that  
20 employees are communicating with one another. Things were  
21 happening. That is something to be expected. If somebody  
22 gets fired and, you know, in the old days it was word of  
23 mouth, and then came Telegrams and then came, you know, texts  
24 and emails and now -- so I will take it for what it's worth  
25 which means employees are obviously communicating. They're

1 communicating contemporaneously when things were happening,  
2 and so whether it's in a chat room or they whispering to each  
3 other in the hallway or some other form of communication that  
4 is something that occurs in the workplace. You know, word  
5 gets out. When things happen, things of importance to  
6 employees, word gets out. And, you know, the old rumor mill,  
7 did you hear what happened to so and so? You know, and so  
8 I'm not taking it for the truth of the matter, you know,  
9 asserted. I'm just simply -- I'll take it for the fact  
10 that, as can be expected, that as events are happening in the  
11 store, employees are communicating with one another. I think  
12 there's plenty of evidence that employees were active in a  
13 concerted matter. Whether it's protected is another issue.  
14 And, you know, they have these concerns. I don't think that  
15 the actual content of a chat room is going to be all that  
16 relevant.

17 MR. FORMAN: But, Your Honor, the chat room identifies a  
18 specific number of team members who had an issue with store  
19 management regarding Black Lives Matter issue. There were  
20 two identified on two separate days. That's it. We're  
21 prepared to cross this witness and discuss those issues  
22 because we think there's a distinction. The witness is not  
23 saying that there were many more. If there were many more,  
24 they were contemporaneously identified in the chat. Those  
25 should have been produced because there are no more. There

1 were two on the 19th and two on the 20th. So we can explain  
2 both of them.

3 MR. PETERSON: And just on the -- the employees did not  
4 know that the Telegram had this expiration at the time.

5 MR. FORMAN: Telegram is a known platform.

6 JUDGE SOTOLONGO: You know, some of the persons who the  
7 witness has mentioned, as far as I know, are not -- all may  
8 not be in this community of Charging Parties here. To the  
9 extent that there is a Charging Party who's going to be  
10 testifying or -- is going to be testifying thereafter, who  
11 was part of the chat room, as I previously ruled, to the  
12 extent that those documents are still producible and  
13 discoverable that they should be produced. As I said, a  
14 third party, you know, third party -- as I say in my ruling,  
15 third party communications are not relevant unless I rule  
16 they are called as a witness in which case the General  
17 Counsel or Charging Party must notify the Respondent, you  
18 know, with 48 hour notice and produce whatever documents are  
19 available.

20 So in any event, I don't need to make a ruling as far as  
21 whether these general conversations are, you know, are really  
22 producible this at this point. I don't see that. I just  
23 don't see that being necessary. I mean why -- you've been  
24 informed that they're no longer available. Is that correct?

25 MR. PETERSON: Yes, everything that --

1 MS. SCHAEFER: Can we -- I'm sorry. Just for a second.  
2 I think there's -- we don't need to go down this road. We --

3 JUDGE SOTOLONGO: I agree.

4 MS. SCHAEFER: Like at this exact moment because we have  
5 been -- portions of -- I just want to be clear because, Your  
6 Honor, you're not privy to the production. We've been --  
7 some of the Telegram chats we have. We have portions of  
8 them. I think the question was that there's some --  
9 Mr. Ritterman made a representation and asked Your Honor to  
10 take some specific action about the admissibility of the  
11 testimony. So I just don't want to get into like a subpoena  
12 fight right now. I don't think --

13 JUDGE SOTOLONGO: No, I don't mean to. And like I said,  
14 I won't make that ruling because again this is not -- I'm not  
15 taking it for the truth of the matter asserted. I'm just  
16 thinking of the fact that the employees were communicating  
17 when events were, you know, occurring -- on events that were  
18 occurring contemporaneously and, you know, and that's to be  
19 expected. You know, the proof -- ultimately, you know, there  
20 is no other designation as to where employees were active  
21 concertedly here as one at the issue. The issue is whether  
22 their action as related to Black Lives Matter was protected,  
23 and that's really the issue here. And I don't think this  
24 chat room or this Telegram platform is going to be really all  
25 that much relevance as to that.

1 MS. SCHAEFER: Correct. And --

2 MR. RITTERMAN: May I ask my next question, Mr. Hearing  
3 Officer?

4 JUDGE SOTOLONGO: Yes.

5 MR. RITTERMAN: Thank you, Your Honor.

6 Q. BY MR. RITTERMAN: To what -- when you're discussing  
7 with Mr. Allshouse about the pins, to what extent, if any,  
8 did you express to him that these pins were meant to create a  
9 fair and more equitable workplace to avoid racism, sexism,  
10 transphobia and homophobia?

11 MS. SCHAEFER: Objection, Your Honor. Leading.

12 MR. RITTERMAN: To what extent, if any. It's not yes or  
13 no.

14 JUDGE SOTOLONGO: That is leading.

15 MR. RITTERMAN: Okay.

16 Q. BY MR. RITTERMAN: To what extent, if any, was it -- did  
17 you express that your pin was to express any sort of  
18 opposition to hatred towards particular groups?

19 A. To a great extent.

20 Q. Which groups?

21 A. Black employees.

22 Q. Any others?

23 A. Trans people, queer people, any marginalized group.

24 Q. Okay. Thank you.

25 MR. RITTERMAN: Those are all the questions I have. I

1 may ask to reserve the right for her return.

2 JUDGE SOTOLONGO: Sure.

3 MR. RITTERMAN: Thank you.

4 JUDGE SOTOLONGO: All right. Okay. Ms. Schaefer, the  
5 ball is in your court. I assume you ask for an affidavit?

6 MS. SCHAEFER: Yes.

7 JUDGE SOTOLONGO: And then also how long it is,  
8 Mr. Peterson, and then we will take a corresponding lunch  
9 break, and during the lunch break, it will give Respondent a  
10 chance to look at the Jencks statement.

11 MR. PETERSON: Certainly, Your Honor. The witness has  
12 one affidavit. It's 10 pages long.

13 JUDGE SOTOLONGO: Okay. How much time do you think  
14 you'll need?

15 MS. SCHAEFER: It's going to take me a bit. It's 12:45  
16 right now. Can we take until 2 o'clock?

17 JUDGE SOTOLONGO: All right. Let's resume at 2 o'clock  
18 then. Thank you.

19 **Off the record.**

20 **(Whereupon, at 12:45 p.m., a lunch recess was taken.)**

21

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1                   **A F T E R N O O N   S E S S I O N**

2   **(Time Noted: 2:03 p.m.)**

3           **JUDGE SOTOLONGO: All right. Let's go back on the**  
4 **record.**

5           All right. Ms. Schaefer, the ball's in your court. I  
6 just want to note for the record, Mr. Ferrell has rejoined us  
7 this afternoon. Welcome, Mr. Ferrell. Please proceed,  
8 Ms. Schaefer.

9           MS. SCHAEFER: Okay. Thank you, Your Honor.

10                                   **CROSS-EXAMINATION**

11 Q. BY MS. SCHAEFER: Mx. Candrilli, my name is Erin  
12 Schaefer. I pronounce it Schaefer, and I'm going to ask you  
13 a few questions today. And, we're going to kind of go  
14 through the same way you did with Mr. Peterson. If you need  
15 me to repeat something or if I'm asking a question and you're  
16 unclear, just let me know, and I'll try to, try to rephrase  
17 it. Try to keep your voice up and if you would just make  
18 sure you answer or let me finish asking the question before  
19 you answer, I would appreciate that. I know it's not how  
20 normal humans speak, but lawyers are not always normal.

21           All right. So you testified you've been employed at  
22 Whole Foods since August 2018. Is that correct?

23 A. Yes.

24 Q. All right. And you're a part-time employee?

25 A. Part-time employee, have been for the duration.

- 1 Q. Since 2018, you've been --
- 2 A. Yes.
- 3 Q. -- a part-time employee?
- 4 A. Yes.
- 5 Q. Okay. And specifically in June of 2020, you only worked
- 6 2 days a week, correct?
- 7 A. Correct.
- 8 Q. And that was Mondays and Tuesdays?
- 9 A. Correct.
- 10 Q. And you testified that you worked a specific shift. On
- 11 Mondays, did you work the 6 a.m. to 2 p.m. shift?
- 12 A. Yes, yes.
- 13 Q. And then on Tuesdays, did you work the same shift or a
- 14 different shift?
- 15 A. The same shift. It could be a late shift, but it rarely
- 16 ever is.
- 17 Q. Okay. And you testified that you currently work and in
- 18 June of 2020, you worked in the seafood department?
- 19 A. Correct.
- 20 Q. Now, in seafood, you don't wear an apron, correct?
- 21 A. We do not.
- 22 Q. What do you wear? What does your uniform look like?
- 23 A. We wear a black T-shirt or a blue T-shirt with a Whole
- 24 Foods insignia on the shoulder, the left shoulder, and we
- 25 wear hats for food safety purposes. Typically, they're open

- 1 standard issue, yes. And sometimes we wear water proof  
2 grudens.
- 3 Q. Grudens.
- 4 A. They're just like --
- 5 Q. G-r-u-d-e-n-s?
- 6 A. Yeah, they're like waterproof waders.
- 7 Q. Ah, like in the back culling fish room?
- 8 A. Yes.
- 9 Q. Got it. Okay. The -- did you wear a white chef's coat?
- 10 A. I did not, but the meat department does.
- 11 Q. Okay. So you wore the black T-shirt but without an  
12 apron. Is that correct?
- 13 A. Correct.
- 14 Q. And I'm sorry. And the T-shirt had a Whole Foods logo  
15 on the arm?
- 16 A. The left arm, yea big, maybe a little bigger than a half  
17 dollar.
- 18 Q. Okay. And you testified that you wore a hat with no  
19 logo, a logo-less hat. Was the hat part of your uniform?
- 20 A. Not a part of standard issue uniform, no.
- 21 Q. But you were permitted to wear a hat?
- 22 A. Yes.
- 23 Q. Did you need to wear something covering your hair?
- 24 A. Need to, yes.
- 25 Q. And that's because you worked in prepared food?

- 1 A. Food safety.
- 2 Q. And there was a little bit of testimony about the
- 3 specific -- the ASTLs. It was Matt -- does Matt Kowalski
- 4 sound like that's the correct name?
- 5 A. Yes.
- 6 Q. And Albana Baci. Does that sound like the correct --
- 7 A. Yes.
- 8 Q. -- last name for that person?
- 9 A. Yes.
- 10 Q. And Jaime Kotmair?
- 11 A. Yes.
- 12 Q. Is that correct? I'll give the court reporter those
- 13 spellings afterwards. And those people were the ASTLs?
- 14 A. ASTLs, yes.
- 15 Q. So did you describe them earlier as sort of the
- 16 assistant store managers?
- 17 A. Correct.
- 18 Q. And Joe Burton was the store team leader at the -- in
- 19 June -- at the beginning of June 2020, correct?
- 20 A. Correct.
- 21 Q. Joe Burton at some point in June 2020 was terminated.
- 22 Is that correct?
- 23 A. I think it was in June, yes.
- 24 Q. And there's a new store team leader there now, correct?
- 25 A. There is.

1 Q. And what's that person's name? Do you know?

2 A. I'm sorry. I should know. He's very sweet.

3 Q. Is it Shana?

4 A. No, Shana was there and has since moved on.

5 Q. Okay.

6 A. I'm so sorry.

7 Q. That's fine. Don't worry about it.

8 A. He's very nice.

9 Q. Okay. But Joe Burton was terminated in June --

10 A. Yes.

11 Q. -- of 2020? And was there a period of time where there

12 were people filling in sort of that role while Joe was either

13 on vacation or after he was terminated?

14 A. Yes. Interim STLs. I believe that Travis Phaup filled

15 that role for a few days but then it was Jenny Ross and Lamin

16 Humma.

17 Q. Okay. All right. Now, Joe was on a leave of absence

18 for a period of time. Is that correct? He was not in the

19 store for a period of time in June 2020?

20 A. He was not in the store for a period of time.

21 Q. And that period of time started about a week after the

22 June 1st incident?

23 A. It felt as though it coincided, but I'm not sure.

24 Q. Okay. Now, we're still living in this, but the -- I

25 want to talk a little bit about the COVID-19 pandemic, just

1 for background. So in mid April 2020, the pandemic started,  
2 correct? Roughly March.

3 A. I would give it an early March, yeah.

4 Q. And you --

5 A. And we were all sick in late February.

6 Q. Fair. I wonder why. So were you -- and you were  
7 employed at Whole Foods Market when the pandemic began,  
8 correct?

9 A. Yes.

10 Q. And prior to March 2020, had you ever been required to  
11 wear facemasks while you were working at Whole Foods Market?

12 A. No.

13 Q. And at some point Whole Foods began requiring employees  
14 to wear facemasks, correct?

15 A. Correct. I begged them.

16 Q. And when Whole Foods began requiring facemasks, how did  
17 that information get communicated to you?

18 A. I don't remember how that information was disseminated.

19 Q. Okay. And you testified that everyone was sick. So  
20 generally were people calling out of work a lot during the  
21 pandemic for a variety of reasons?

22 A. Yeah.

23 MR. PETERSON: Objection. Relevance.

24 JUDGE SOTOLONGO: Overruled.

25 Q. BY MS. SCHAEFER: People were calling out because they

1 were sick and couldn't come to work. Is that fair?

2 A. I just fell ill in late February.

3 Q. Okay. Were there people who decided they didn't feel  
4 safe coming to work and so they didn't come to work?

5 A. I'm sure so. That was not me.

6 Q. And do you recall if the attendance policy was suspended  
7 in --

8 A. I do recall.

9 Q. -- in approximately -- at some point? Do you recall why  
10 the policy was suspended? Did anyone explain to you why they  
11 were suspending the policy?

12 A. No, but I inferred.

13 Q. What did you infer?

14 A. I inferred that it was about comfortability with coming  
15 to those shifts.

16 Q. All right. So I want to direct your attention to May  
17 25th, 2020. Do you recall anything? Specifically that that  
18 was the day George Floyd was murdered.

19 A. I knew it was late May.

20 Q. I just want to talk a little bit about the immediate  
21 aftermath of his murder. Do you recall that there were  
22 protests around the country?

23 A. I do recall.

24 Q. And they started in Minneapolis where he was murdered  
25 and spread throughout the country and throughout the world?

1 A. I do recall.

2 Q. And the protests that sprung up were protesting the  
3 unjustified killing of both George Floyd but also black  
4 people at the hands of the police, correct?

5 A. Systematic racism.

6 Q. Okay. And part of that is -- well, part of that is the  
7 murder of black men at the hands of the police?

8 A. Part of systematic racism is the policing system.

9 Q. There was a protest in Minneapolis, correct?

10 A. Correct.

11 Q. The night that George Floyd was murdered, correct?

12 A. I believe so.

13 Q. Do you think the people that were protesting there were  
14 protesting George Floyd's murder?

15 MR. PETERSON: Objection. Calls for speculation.

16 JUDGE SOTOLONGO: It does. So sustained.

17 Q. BY MS. SCHAEFER: Okay. And there were protests in  
18 Philadelphia after the murder of George Floyd, correct?

19 A. There were.

20 Q. And did you attend any of those protests?

21 A. I did.

22 Q. And there were people at those -- where was the protest  
23 you attended?

24 A. I attended multiple. A lot of them started in the  
25 Center City area.



1 Q. That's kind of where we are right now?

2 A. Yes.

3 Q. And just for the record, we're across the street  
4 essentially from City Hall?

5 A. Correct.

6 Q. Just -- I think a lot of the people here aren't from  
7 Philly. So you're going to have to be our guide for this.  
8 Where in -- this is called -- this area is called Center  
9 City, correct?

10 A. It is.

11 Q. How far from here is the South Street store?

12 A. Probably 15 to 20 minutes walking.

13 Q. All right. It's essentially -- it's south of here,  
14 correct?

15 A. It is south of here. If we were to walk down Broad  
16 Street, I don't know how many blocks, and then make a left on  
17 South Street, ours would be positioned five blocks in, the  
18 900 block, 910.

19 Q. So we're not super far where we are right now?

20 A. We're not super far.

21 Q. Now, when you attended these protest that you said were  
22 mostly in this Center City area, did you hear people chanting  
23 at the protests? Were there sort of group chants?

24 MR. PETERSON: Objection. Relevance and exceeds the  
25 scope of direct.

1 JUDGE SOTOLONGO: Overruled. I'll allow it.

2 THE WITNESS: Yes, I'm sure they did.

3 Q. BY MS. SCHAEFER: Did people chant things like Black  
4 Lives Matter?

5 A. Yes, they did.

6 Q. Did people chant No Justice No Peace?

7 A. They did.

8 Q. How about defund the Police?

9 A. They did.

10 Q. And I can't breathe?

11 A. They did.

12 Q. Did people carry signs at the protests?

13 A. They did.

14 Q. Did you carry a sign at the protests?

15 A. I don't like signs.

16 Q. Okay. I'm the same. And at this -- at the protests you  
17 attended, was anyone -- the protests in Center City, did  
18 anyone chant anything about Whole Foods?

19 A. No.

20 Q. And the protests that you attended and the protests  
21 throughout Philadelphia were mostly peaceful, correct?

22 A. Yes.

23 Q. But there were some incidents of vandalism and property  
24 damage that occurred in the city while these protests were  
25 going on?

1 A. I'm sure so.

2 Q. Did you ever see any broken windows or anything?

3 A. Not like my immediate recollection to be honest with  
4 you.

5 Q. Okay. Now, you testified that the first day you ever  
6 wore the phrase, Black Lives Matter, to work was June I  
7 believe 21st.

8 A. It would have been the 22nd.

9 Q. The 22nd.

10 A. Yes.

11 Q. And so prior to that date, you had never worn anything  
12 with the phrase, Black Lives Matter, to work at Whole Foods?

13 A. I had never worn really anything besides --

14 Q. The standard uniform.

15 A. Correct.

16 JUDGE SOTOLONGO: So you had never worn some of the pins  
17 you earlier described as was a part of trans and gay rights  
18 and things like that, you had never worn any pins yourself?

19 THE WITNESS: -- but, no, I had not.

20 JUDGE SOTOLONGO: Okay.

21 Q. BY MS. SCHAEFER: Okay. So we talked a little bit about  
22 curfew. Do you recall if the curfew started around May 30th?  
23 Does that sound right?

24 A. That sounds absolutely right.

25 Q. And the curfew was -- went on for multiple nights. Is

1 that correct?

2 A. So far as I know, yes.

3 Q. Okay. Rather than make you guess, I'm going to show you  
4 what I'm going to mark as GC Exhibit -- I'm sorry. I  
5 switched sides. R -- I think we're up to 47.

6 JUDGE SOTOLONGO: Let me check my records. According to  
7 my records -- by the way, I do have actually a couple  
8 questions. The last one was 46. So the next one would be 47  
9 according to my records.

10 MS. SCHAEFER: Okay. I'm sorry. Did you say you have  
11 some questions, Your Honor?

12 JUDGE SOTOLONGO: I'll do it later. Just a couple of  
13 exhibits, one for the General Counsel and one for the  
14 Respondent. I wasn't sure what had happened to them, and I  
15 just couldn't read my own handwriting.

16 MS. SCHAEFER: Understood. Permission to approach, Your  
17 Honor.

18 JUDGE SOTOLONGO: Please.

19 **(Respondent's Exhibit 47 marked for identification.)**

20 Q. BY MS. SCHAEFER: Okay. All right. So if you could  
21 just look through this exhibit. This is a -- these are --  
22 I'll represent that these are the executive orders that were  
23 signed by the mayor. Do you know the name of the mayor, Mx.  
24 Candrilli?

25 A. Last name Kenney.

1 Q. Kenney. Okay.

2 MS. SCHAEFER: These were located on the City of  
3 Philadelphia's website, and they indicate the dates and times  
4 and the extent of the curfews. So I thought it would be  
5 helpful. So I'll ask Your Honor to take judicial notice of  
6 the government records.

7 JUDGE SOTOLONGO: You're offering --

8 MS. SCHAEFER: I'm offering them.

9 JUDGE SOTOLONGO: Yes. All right. Any objection?

10 MR. PETERSON: What's the relevance? These are curfew?

11 MS. SCHAEFER: Yeah, it shows -- if you look, for  
12 example, if you look on page -- the second page of the  
13 exhibit, it'll show that there's the May 31, 8 p.m. until 6  
14 a.m., May 31st, that's the first curfew that goes into  
15 effect. If you look on page 4 of the exhibit, May 31st, 6  
16 p.m. to 6 a.m. curfew. It also orders the immediate closure  
17 of all businesses including grocery stores. So I think, you  
18 know, there were some initial questions being asked about the  
19 curfew, and I think this is --

20 JUDGE SOTOLONGO: I did ask some questions regarding  
21 what dates or what times when the curfew went in effect, and  
22 I guess this goes to it.

23 MR. PETERSON: So, yeah. If --

24 MS. SCHAEFER: Rather than guess when the curfew went --

25 MR. PETERSON: Yeah.

1 MS. SCHAEFER: -- went into effect.

2 MR. PETERSON: If the purpose is to show the times and  
3 dates of the curfews, I have no objection to that.

4 JUDGE SOTOLONGO: All right. 47, Respondent's 47 is  
5 admitted.

6 **(Respondent's Exhibit 47 received in evidence.)**

7 THE WITNESS: It's daily. Each one was coming out  
8 daily. Is that what it is?

9 Q. BY MS. SCHAEFER: Yes, there's a different one for each  
10 day between May 30th and June 6th. All right. So I'm -- and  
11 part of the reason for the curfew was because some of the  
12 protests had gotten out of hand.

13 MR. RITTERMAN: Objection. My client's not -- doesn't  
14 work in the Mayor's office. That's my client. She was --

15 MS. SCHAEFER: I'm asking a question.

16 JUDGE SOTOLONGO: Well, yeah. I mean this witness would  
17 not know the answer why the Mayor -- I think -- I mean the  
18 security declaration sort of speaks for itself.

19 MS. SCHAEFER: Okay.

20 JUDGE SOTOLONGO: But this witness obviously unless you  
21 were an assistant and aide to the Mayor, at the time, I don't  
22 think it's --

23 MS. SCHAEFER: Understood. I'll ask some other  
24 questions first.

25 **(Respondent's Exhibit 48 marked for identification.)**

1 Q. BY MS. SCHAEFER: I'm going to -- I want to talk to you  
2 about the South Street location. We just talked about how it  
3 was approximately 15 minutes away from here. I'm going to  
4 show you what I'm going to mark as GC -- I'm sorry --  
5 Respondent -- I'm sorry. Respondent Exhibit 48. It's a four  
6 page exhibit. So I want you to take a minute to look at the  
7 first page if you would. Do you see that there's two red  
8 pins in the center of the, in the center of the picture. One  
9 says Whole Foods Market. Can you see that? And the other  
10 says South Street?

11 A. I do.

12 Q. Okay. Is this a fair and accurate picture of the block  
13 where the South Street store is?

14 A. It is.

15 Q. And you had testified that it shared a building, the  
16 block with the South Street Police Station. Is that correct?

17 A. Yes.

18 Q. And that's the South Street Police Station. That's it's  
19 location?

20 A. It is.

21 Q. Would you flip to page 2 of the exhibit for me? And do  
22 you recognize the building depicted in this photo?

23 A. I do.

24 Q. Okay. And can you point out to everyone, which --  
25 where's the Whole Foods entrance?

1 A. The Whole Foods entrance is right around here beneath  
2 this oval sign.

3 JUDGE SOTOLONGO: The witness is showing, the witness is  
4 showing a spot in the middle of the extreme left side of the  
5 picture. There's what appears to be like a Whole Foods sign  
6 above the doorway and that's where he's pointing to.

7 THE WITNESS: Correct.

8 JUDGE SOTOLONGO: Correct. All right. Thank you.

9 Q. BY MS. SCHAEFER: And then on the right-hand side of the  
10 photo, do you see where it says Police?

11 A. I do.

12 Q. Is that the mini station or the sub police station?

13 A. It is.

14 Q. And there's several police cars parked on the street.  
15 Do you see that?

16 A. Yes, I do.

17 Q. Is that a common area where police park their vehicles?

18 A. Typical, yes.

19 Q. Okay. Do police also -- now, if you look above, there  
20 are sort of holes in the brick. They're not windows.  
21 They're -- there's no glass in them. What is that area?

22 A. Those are two levels of parking decks.

23 Q. And that's above the store?

24 A. Yeah. Actually, I know for certain the top rung is a  
25 parking deck, and then there's a parking deck on the floor,



1 open air. So I don't know that I know what these bottom four  
2 holes are to.

3 Q. On the right-hand side?

4 A. On the right-hand side.

5 Q. Okay.

6 JUDGE SOTOLONGO: The one immediately -- the ones --  
7 these ones are the openings immediately above the police --

8 THE WITNESS: Yeah, I'm not sure.

9 Q. BY MS. SCHAEFER: And you testified that the top, above  
10 the holes, I guess where the gray sort of tubular things are,  
11 that's the top parking deck?

12 A. Correct.

13 Q. And you testified that there was a town hall. Is that  
14 where the town hall was on the roof?

15 A. I believe all of them were held there.

16 Q. And who -- did people park in this parking structure?

17 A. Yes.

18 Q. Customers?

19 A. Customers and employees.

20 Q. Do you drive?

21 A. I do not.

22 Q. Do the police also park in that parking structure?

23 A. Not so far as I know, but I'm not in and out of there  
24 very often at all.

25 Q. Okay. When you enter and exit the store, do you use

1 this front entrance?

2 A. For the 6 a.m. shift, I don't go through the front,  
3 front doors. There's a gray door beside it to the right  
4 looking at the front facing, and I punch in a key code and  
5 walk in.

6 Q. Okay. And that is -- but that's on South Street?

7 A. It's on South Street, yes.

8 Q. Okay.

9 A. Very close to the main entrance.

10 Q. Okay. So let's look at the next picture. This is -- do  
11 you recognize this street?

12 A. I do. Robin.

13 Q. And what is Robin Street? Where is Robin Street?

14 A. It's behind the Whole Foods and the police station.

15 Q. And --

16 A. North of South Street.

17 Q. So this is -- would you agree that this is a picture of  
18 the back of the store?

19 A. Yes, I would agree.

20 Q. Okay. And then if you look at the third picture, do you  
21 recognize that area?

22 A. Yes, I do.

23 Q. Okay. And is that -- what is the area that we're  
24 looking at in the fourth picture?

25 A. This is the loading dock area. Dumpsters are back

1   there, recycling, composting.

2   Q.   All right.  And those two garage doors there, they're  
3   deep recess in the picture --

4   A.   Yeah.

5   Q.   -- that's the loading dock for Whole Foods?

6   A.   It is, yes.  One of those doors is broken right now.  
7   You all should have them fix it.

8   Q.   Okay.  And the picture on the left, where that car is  
9   coming out, is that the exit for the parking structure if you  
10   know?

11   A.   Yes.

12   Q.   Okay.  And again, the police station appears to have a  
13   back entrance there?

14   A.   Yes.

15       MS. SCHAEFER:  So, Your Honor, I'd like to move in this  
16   document as Exhibit 48.

17       JUDGE SOTOLONGO:  Any objection?

18       MR. PETERSON:  Just one quick voir dire question.

19       JUDGE SOTOLONGO:  Yes.

20                               **VOIR DIRE EXAMINATION**

21   Q.   BY MR. PETERSON:  The last question was about the police  
22   -- there's a police exit right there?  Or is that --

23   A.   There's a door related to the police station.

24       MS. SCHAEFER:  There's a blue door on the left.

25       MR. PETERSON:  Oh, the blue door on the left.

1 MS. SCHAEFER: Sorry. Which is also on page 3.

2 MR. PETERSON: Got it.

3 MS. SCHAEFER: It's the same door.

4 MR. PETERSON: Yeah, no objection.

5 JUDGE SOTOLONGO: All right. Respondent's 48 is  
6 admitted.

7 **(Respondent's Exhibit 48 received in evidence.)**

8 **CROSS-EXAMINATION (cont.)**

9 Q. BY MS. SCHAEFER: Now, we talked about protests in  
10 Philadelphia. Did some of those Black Lives Matter protests  
11 take place on South Street?

12 A. I'm sure so, not the ones that I attended.

13 Q. Okay. Was there ever a time when you were working and  
14 there was a protest going on, a Black Lives Matter protest  
15 going on, on South Street?

16 A. It might have walked by. It was not a focal point.

17 Q. Not a focal point for -- nothing something you saw with  
18 first hand knowledge?

19 A. I did not see anyone walk by in protests on South Street  
20 while I was working.

21 Q. Okay. Do you recall seeing doors and windows on South  
22 Street boarded up?

23 A. Yes.

24 Q. Do you know why the plywood was on the doors?

25 A. I imagine to protect the property.

1 Q. Did you report to work while the plywood was up?

2 A. I did.

3 **(Respondent's Exhibit 49 marked for identification.)**

4 Q. BY MS. SCHAEFER: Okay. I'm going to show you some  
5 pictures, what I'm going to mark as R-49. I'm just going to  
6 ask you to flip through these pages, and then I'll ask you  
7 some questions about them. Now, I know you didn't take these  
8 pictures, but do you recognize this as the Whole Foods Store  
9 where you work that was boarded up?

10 A. I do recognize it.

11 Q. So you saw the windows, page 1. Can you just describe  
12 if this is an accurate picture of what you saw at the store?

13 A. It is an accurate picture.

14 Q. And those are the front windows of the store that are  
15 boarded up?

16 A. Correct.

17 Q. And is the entrance -- the entrance would be to the left  
18 of this picture, the entrance to the store, right?

19 A. I don't know. It's really boarded up. I think -- I  
20 believe everything was boarded up when it was not  
21 operational.

22 Q. Ah, so there was a period of time when the store was  
23 closed closed? No one -- people were not shopping there,  
24 correct?

25 A. Correct.

1 Q. All right. So I just want to flip to page 2. Do you  
2 recognize what is on page 2?

3 A. I can infer where this is, but I didn't see this  
4 entryway.

5 Q. Okay. That's fine. And then page 3, that's also the  
6 front of the store. Is that correct?

7 A. Correct.

8 Q. How about page 4? Does that look like the loading dock  
9 area?

10 A. It does.

11 Q. And are you familiar with the door on page 5?

12 A. I am. I didn't see that firsthand, but yes.

13 Q. Did you see the loading dock --

14 A. I did.

15 Q. -- firsthand when it was boarded up?

16 A. Yes.

17 MS. SCHAEFER: I'm going to reserve moving this in, but  
18 I just wanted to --

19 Q. BY MS. SCHAEFER: Is this -- when we talk about the  
20 store being boarded up --

21 A. This is what it looked like.

22 Q. -- at the time, this is what we're talking about?

23 A. Correct, yeah.

24 Q. And approximately -- did you ever go to the store on  
25 your days off or go to the South Street area on your days

1 off?

2 MR. RITTERMAN: Objection. Timeframe.

3 Q. BY MS. SCHAEFER: Between June -- so George Floyd was  
4 killed on May 25th, which I believe was on -- which was a  
5 Monday. I'll represent that it was a Monday. So you would  
6 have been working that day. Is that correct?

7 A. That's correct.

8 Q. Okay. The next Monday was I believe June 1st on the  
9 calendar. Do you know if you went to the store between your  
10 shift on the 25th, 26th, Monday and Tuesday, and June 1st,  
11 2nd, when you went back?

12 A. I imagine I wouldn't have.

13 Q. Okay.

14 A. Yeah.

15 Q. You didn't hang out or go shopping on your time off?

16 A. Not really.

17 Q. Okay. So when you went to the store on the 1st that  
18 would have been when you saw these pictures -- what is  
19 depicted in these pictures?

20 A. In the beginning of June, I would see a lot of this. I  
21 won't nail it down to a day because I don't remember.

22 Q. Okay. That's fine.

23 MS. SCHAEFER: Your Honor, I'll move this in as R-49.

24 MR. PETERSON: I guess a relevance objection.

25 MS. SCHAEFER: Context.

1 JUDGE SOTOLONGO: Well, I'll admit it.

2 **(Respondent's Exhibit 49 received in evidence.)**

3 THE WITNESS: Just so, just so we're clear, I'm a little  
4 turned around by this one because I don't know if we're  
5 looking at it from --

6 Q. BY MS. SCHAEFER: Which angle?

7 A. -- the west side or the east side, but it is front  
8 facing so far as I know.

9 Q. Okay.

10 A. I just want to make that clear.

11 Q. It's the front of the store, South Street side of the  
12 store?

13 A. Yeah.

14 Q. Got it. Now, you went to work --

15 JUDGE SOTOLONGO: Wait. How long altogether, if you  
16 know, don't guess now, if you know, approximately how long  
17 was the store boarded up?

18 THE WITNESS: They were putting it up and taking it down  
19 every day over a period of at least 5 days. After that I  
20 don't --

21 JUDGE SOTOLONGO: So during the day, they would take it  
22 down and in the evening they would put it back up again just  
23 before curfew went in place?

24 THE WITNESS: Or not even necessarily curfew. We closed  
25 early a few times.



1 JUDGE SOTOLONGO: Okay.

2 THE WITNESS: So at the point of closure, it would then  
3 be boarded up.

4 JUDGE SOTOLONGO: Okay. And how long did this last  
5 then, the boarding up, up and down? When did it start and  
6 how long did it last altogether?

7 THE WITNESS: My frame of knowledge, like there was  
8 around 5 days of this.

9 JUDGE SOTOLONGO: Okay.

10 Q. BY MS. SCHAEFER: So you went to work on -- June 1st was  
11 a Monday. So you went to work that day. Do you recall  
12 specifically going to work on June 1st?

13 A. Yes, I believe that was the day the store closed during  
14 my shift. I remember packing up.

15 Q. Okay. And you had a 6 a.m. to 2 p.m. shift?

16 A. Correct.

17 Q. And around 12:30, you were sent home?

18 A. That feels right.

19 Q. That sounds right. And that was because the store was  
20 closing early. Is that correct?

21 A. Yes.

22 Q. And the store was closing early because the police had  
23 notified the store manager that there was protests coming in.  
24 Is that correct?

25 A. I could infer.

1 Q. How did you find out the store was closing early that  
2 day?

3 A. Because I had to put the fish away.

4 Q. Okay. Well, the fish didn't tell you to put them away.  
5 How did you find out that you had to put the fish away?

6 A. I believe it was Robert Fluck (ph.), who was my seafood  
7 manager at the time. I'm not quite sure.

8 Q. Okay.

9 A. But I was told to save the product and get out  
10 essentially.

11 Q. Okay. And did Robert tell you why you had to put the  
12 fish away, what was happening?

13 A. I'm sure so. And it would probably be that there were  
14 protests in the area.

15 Q. Okay. After you packed up and you went, what exit -- do  
16 you know what exit you used?

17 A. I don't remember.

18 Q. When you left, did you see protesters outside the store?

19 A. Not that I recall.

20 Q. Did you see police in the store?

21 A. I don't remember.

22 Q. And did you see police outside the store?

23 A. Yes, but that's all the time.

24 Q. When you say that's all the time?

25 A. Proximity.

1 Q. What do you mean?

2 A. To the station.

3 Q. Police just hang outside the station, the police  
4 station?

5 A. Yes.

6 Q. I don't know.

7 A. They'll stand outside in the front or in the back often,  
8 and their squad cars are parked out there. So when they're  
9 coming and going. There's always a light police presence at  
10 least.

11 Q. Okay. On that particular day, when the police were  
12 outside did you notice if they were -- when you see the  
13 police outside the store on a regular day --

14 A. Um-hum.

15 Q. -- how are they dressed typically?

16 A. Casual with the --

17 MR. PETERSON: Objection. Relevance.

18 MS. SCHAEFER: Okay. I'm building a foundation.

19 JUDGE SOTOLONGO: Go ahead. I'll allow it.

20 Q. BY MS. SCHAEFER: So when you say casual, they're in  
21 their standard blue uniforms?

22 A. Right.

23 Q. Okay. On that particular day or around that -- I'll ask  
24 twice, but on that particular day, you recall seeing the  
25 police, were they in their dress blues or were they in riot

1 gear?

2 A. I'm not going to nail down that particular day because I  
3 don't know. In the period of early June, there was a lot of  
4 riot helmets. There was often riot gear.

5 Q. And when you left that day, did you go home?

6 A. Yeah.

7 Q. You got out of the area?

8 A. I did.

9 Q. And because you understood that the area would become  
10 unsafe?

11 A. No.

12 Q. No?

13 A. No.

14 Q. Okay. Understood. When you left that day, did you see  
15 Joe Burton?

16 A. I did not see Joe Burton.

17 Q. Did you see -- there was some testimony about Joe Burton  
18 giving food and water to the police. Did you see Joe Burton  
19 give food and water to the police?

20 A. No.

21 Q. Did you ever -- how did you come to understand that Joe  
22 Burton had done that?

23 A. I believe it happened in the Telegram chat, and that was  
24 the genesis I believe. I know I had someone who was a  
25 coworker at the time who communicated it with me. I don't

1 know if I should like share names or not.

2 Q. But you didn't see Joe Burton --

3 A. I was not standing there when it happened, no.

4 Q. Got it. Now, when you went -- the next day was a  
5 Tuesday. So you would have worked that day. That would be  
6 June 2nd. Does that sound right?

7 A. Yes.

8 Q. And on June 2nd, were you -- there was a curfew that  
9 night at 6 o'clock and the store closed early. Do you  
10 remember specifically that day?

11 MR. RITTERMAN: Objection. I object to the testimony.  
12 This keeps happening. They're leading questions.

13 JUDGE SOTOLONGO: And what's the basis of your  
14 objection?

15 MR. RITTERMAN: That counsel's testifying that this  
16 happened, that the store closed early, there was a curfew  
17 that day. Isn't that for my client to --

18 JUDGE SOTOLONGO: That's true.

19 MR. RITTERMAN: Thank you, Your Honor.

20 Q. BY MS. SCHAEFER: All right. On June 2nd, do you recall  
21 that worked -- you were scheduled to work from 1:30 to 9:30  
22 that day?

23 A. That would have been rare, but possible, yes.

24 Q. Okay. And that on June 2nd, the store closed -- there  
25 was a curfew, and do you recall the store closing early

1 because of the curfew on June 2nd?

2 A. I recall a lot of early closures. I don't know why each  
3 one happened. I'm sure happened at 6 o'clock when the true  
4 curfew fell at 8 p.m. I'm sure some of them were that.

5 Q. Okay. When the curfew fell at 6, you were sent home  
6 earlier than 6 though?

7 MR. RITTERMAN: Objection. Are we talking about June  
8 2nd still or --

9 MS. SCHAEFER: I am, yes.

10 JUDGE SOTOLONGO: Yes. So you don't recall what  
11 specific dates -- do you recall being -- the store closing  
12 early on a number of occasions?

13 THE WITNESS: On a number of occasions, yes.

14 JUDGE SOTOLONGO: But you don't -- you can't specify on  
15 this date or that date?

16 THE WITNESS: What time, no.

17 JUDGE SOTOLONGO: Or what time. So sometimes was it  
18 earlier and sometimes was it later when the store closed?

19 THE WITNESS: Correct.

20 JUDGE SOTOLONGO: Okay.

21 THE WITNESS: I mean if I was there, I'm sure I clocked  
22 in and out when I was supposed to. So that would --

23 MS. SCHAEFER: Okay.

24 THE WITNESS: -- show what happened.

25 MS. SCHAEFER: That's fine.

1 Q. BY MS. SCHAEFER: There weren't -- to your knowledge,  
2 there weren't days when the store was open past curfew?

3 A. To my knowledge, no.

4 Q. Okay. When -- you didn't work -- you worked on the 1st  
5 and 2nd and then the next Monday would have been the 8th and  
6 Tuesday would have been the 9th. When in that period of time  
7 did you learn that Joe Burton gave food and water to the  
8 police?

9 A. I feel as though this was around the 5th of June.

10 Q. Now --

11 A. That's when, that's when I posted about it on the  
12 internet. So that's my earliest memory of it.

13 Q. Okay. And what did you -- I'll get to that in a second.  
14 And do you know if the food that Joe had given the police  
15 would have been thrown out at the end of the day anyway?

16 MR. PETERSON: Objection. Calls for speculation.

17 JUDGE SOTOLONGO: It does. He testified he didn't see  
18 the store leader handing out these items. And so he wouldn't  
19 have known what kind of items or expiration date.

20 Q. BY MS. SCHAEFER: Am I correct in understanding that you  
21 and some of your fellow team members were upset that  
22 Mr. Burton gave food and water to the police?

23 A. We thought it tactless, yes.

24 Q. You thought it was more than tactless though, right?

25 A. Tactless is a good place to start.

1 MR. PETERSON: Objection. Argumentative.

2 JUDGE SOTOLONGO: This is neither here nor there.

3 Please move on.

4 Q. BY MS. SCHAEFER: Well, and you were -- people were --  
5 would you describe people -- you felt Joe Burton should be  
6 fired for giving food and water to the police, correct?

7 A. Held accountable.

8 Q. By Whole Foods?

9 A. Correct.

10 Q. And by held accountable you mean fired?

11 A. It depends.

12 Q. You drafted the coalition emails, correct?

13 A. Yeah. I think in the beginning, I -- held accountable  
14 was definitely the phrase. I didn't know what it would take,  
15 what form that accountability would take. Fired would have  
16 been great.

17 Q. The coalition emails specifically say that Joe Burton  
18 should be fired and that if Joe Burton were not fired, you  
19 would be discontent.

20 A. Yes. On the day of that email being sent, for sure.

21 Q. And the reason -- why was, why was Joe Burton giving  
22 food and water to the police in your opinion, an affirmable  
23 offense?

24 MR. PETERSON: Objection. Relevance.

25 MS. SCHAEFER: It's their words.



1 JUDGE SOTOLONGO: Well, the matter was put into evidence  
2 by the General Counsel when he put these statements that were  
3 written in these platforms. So I'll give you some leeway,  
4 but let's not get carried over board here because we're  
5 straying into areas that are beyond the scope and -- quite  
6 frankly.

7 THE WITNESS: Can you ask it again?

8 Q. BY MS. SCHAEFER: Yeah. Well, I'll ask it. I mean  
9 General Counsel described on direct a triggering event as Joe  
10 Burton giving food and water to the police. Do you recall  
11 that?

12 MR. PETERSON: Objection. General Counsel didn't  
13 testify.

14 MS. SCHAEFER: I'm directing the witness' attention to  
15 something they agreed with on direct.

16 JUDGE SOTOLONGO: Overruled. Go ahead.

17 Q. BY MS. SCHAEFER: Do you recall that?

18 A. A catalyst, yeah.

19 Q. And it was because Burton was giving aid and comfort to  
20 the police at a time when people were marching against police  
21 violence, correct?

22 MR. PETERSON: Objection. Relevance. I did ask some  
23 questions on direct, and some relevance objections were  
24 sustained when I was asking questions.

25 JUDGE SOTOLONGO: Yeah. The problem is that you sort of

1 opened a can of worms by arguing that this letter which --  
2 the main point of which, at least one of the main points was  
3 that this person had been terminated, was part of their  
4 concerted, protected activity, right? So I have to give  
5 Respondent some leeway in exploring your motivation or -- so  
6 you can answer.

7 THE WITNESS: Can you just hit me with the question one  
8 more time?

9 JUDGE SOTOLONGO: The question was -- well, you go ahead  
10 and ask the question again. I'm not going to ask it for you.

11 Q. BY MS. SCHAEFER: Employees were upset because Burton  
12 was giving food and water to the police at a time when  
13 employees, or I'm sorry, when protesters were marching  
14 against police violence.

15 A. There was discontent about that, yes.

16 Q. Okay.

17 A. Additionally because it wasn't shrunk out at least so  
18 far as we know.

19 JUDGE SOTOLONGO: Because it was what?

20 THE WITNESS: Not shrunk out. It's a process of  
21 accounting for inventory.

22 Q. BY MS. SCHAEFER: So what's shrink?

23 A. Shrink is refuse, donations, et cetera, et cetera.

24 JUDGE SOTOLONGO: Shrink is -- I guess in nature -- tell  
25 me if this is true. I've heard it before. This is a term

1 used in the industry meaning -- the retail food industry,  
2 when items go missing without being accounted for?

3 THE WITNESS: The correct process for any type of  
4 refuse, waste or donation is to shrink it. That's the  
5 operative verb. We use a system called ERMA.

6 JUDGE SOTOLONGO: Okay.

7 Q. BY MS. SCHAEFER: And it accounts for anything that's  
8 going to be --

9 A. Not sold.

10 Q. -- not sold. So sometimes -- you work in seafood.  
11 Sometimes product is cut. It can't be sold or it sits out  
12 too long. So it's got to be thrown away, correct?

13 A. Yes.

14 Q. Or donated?

15 A. And before it's thrown away, it is accounted for by  
16 process of shrinking it.

17 JUDGE SOTOLONGO: Okay.

18 Q. BY MS. SCHAEFER: So to go back to my earlier question  
19 about whether or not you knew that food was going to be  
20 thrown away at the end of the day or Joe gave it to the  
21 police.

22 MR. PETERSON: I still object for the same reasons.

23 I --

24 JUDGE SOTOLONGO: The witness wouldn't know that. I  
25 sustain the objection.

1 MR. PETERSON: Thank you.

2 Q. BY MS. SCHAEFER: Would it be fair to say that by Joe  
3 providing food and water to the police, he was picking a side  
4 and taking the side of the protesters -- I'm sorry -- taking  
5 the side of the police against the protesters. Is that how  
6 that was viewed?

7 A. I think the optics were poor, yes.

8 Q. Is it fair to say that Joe was saying black lives don't  
9 matter?

10 A. That's a lot. That's too much.

11 Q. Is that how you felt?

12 A. That's a lot. It's too much.

13 JUDGE SOTOLONGO: You mean that's too much of a stretch.  
14 You --

15 THE WITNESS: I don't want to say that the man hates  
16 black people. It doesn't seem fair, no.

17 Q. BY MS. SCHAEFER: Okay. I'm going to show you what's  
18 been marked as -- what I'll mark as GC Exhibit 50. I'm  
19 sorry.

20 JUDGE SOTOLONGO: What's been marked GC?

21 MS. SCHAEFER: Sorry.

22 JUDGE SOTOLONGO: Or you're marking it Respondent's.

23 MS. SCHAEFER: No, this is R-50.

24 JUDGE SOTOLONGO: Okay.

25 **(Respondent's Exhibit 50 marked for identification.)**

1 Q. BY MS. SCHAEFER: A few minutes ago you testified that  
2 you posted about Joe Burton on June 5th. Is this  
3 something -- is this the document which you were referring  
4 to?

5 A. Yes.

6 Q. Okay. Now, I don't know if Your Honor uses Instagram,  
7 so we're going to have to explain it a little bit, okay.

8 A. Yes.

9 JUDGE SOTOLONGO: No, I don't use Instagram.

10 MS. SCHAEFER: Okay.

11 JUDGE SOTOLONGO: I'm still trying to fix a clock on our  
12 VCR.

13 THE WITNESS: I just bought a VCR.

14 Q. BY MS. SCHAEFER: All right. So can you -- am I correct  
15 that this is an Instagram story?

16 A. It is. This is an archived Instagram story.

17 Q. Okay. And can you explain to the Judge what an  
18 Instagram story is?

19 A. An Instagram story is something that one would post in a  
20 vertical fashion, and it would be live to your followers for  
21 24 hours unless you took it down or had the settings set so  
22 that only your close friends could see it.

23 Q. And so that's different from just putting a post on  
24 Instagram, correct? The post would be there for perpetuity?

25 A. Yeah, this is more of an ebb and flow.

- 1 Q. Okay. And is this a post that you posted on Instagram  
2 on June 5th and 1:17 p.m.?
- 3 A. Yes.
- 4 Q. Okay. Did you make this graphic?
- 5 A. I did not make this graphic.
- 6 Q. Okay. Did one of your coworkers or --
- 7 A. Yes.
- 8 Q. Now, on this post, you were urging people to call Whole  
9 Foods because Joe Burton gave free food to the police. Is  
10 that fair?
- 11 A. Correct.
- 12 Q. And the post says these cops are beating, tear gassing,  
13 pepper spraying and murdering us. Do you see that?
- 14 A. I do.
- 15 Q. And when you say the police were beating, tear gassing  
16 and pepper spraying us, is that a reference to people  
17 protesting the police?
- 18 A. Systematic racism.
- 19 Q. I don't think that's responsive to my question.
- 20 A. Well, yes, in part. Yeah.
- 21 Q. So when it says the cops are beating people --
- 22 A. Um-hum.
- 23 Q. -- is that a reference to beating protesters?
- 24 A. Yes.
- 25 Q. And tear gassing, that's part of tear gassing

- 1 protesters, correct?
- 2 A. Correct.
- 3 Q. Okay. And the pepper spray, also pepper spraying
- 4 protesters?
- 5 A. Semantics, yes.
- 6 Q. Well, we're lawyers. We know about semantics.
- 7 A. Yes.
- 8 Q. And then murdering us. And is that a reference to
- 9 George Floyd?
- 10 A. Multiple Americans, yeah.
- 11 Q. Breonna Taylor?
- 12 A. Multiple Americans.
- 13 Q. Black Americans?
- 14 A. Black Americans primarily.
- 15 Q. Murdered by the police?
- 16 A. And citizens, too.
- 17 Q. Well, it says these cops are beating us, tear gassing,
- 18 pepper spraying and murdering us. So this --
- 19 A. I understand.
- 20 Q. -- sentence was a specific reference to cops murdering
- 21 people, right?
- 22 A. A specific reference, yes.
- 23 Q. Okay. And when it says demand they stop now, the demand
- 24 was that Whole Foods stop. Is that correct?
- 25 A. I wish I had written everything. I hope that's how that

1 was intended.

2 Q. And then the phone number there is a phone number to  
3 call Whole Foods and complain?

4 A. Correct.

5 Q. Okay. And then at the top here it says, in red, at the  
6 very top of the graphic, it says #BlackLivesMatter, correct?

7 A. Correct.

8 Q. Okay. Were you the only team member -- do you follow  
9 any of your team members on Instagram?

10 A. Yes.

11 Q. Okay. Some of the people in the SOS group chat,  
12 Telegram chat?

13 A. Yes.

14 Q. Okay. And did any of those people post this graphic as  
15 well?

16 A. I believe so, yes.

17 MS. SCHAEFER: Okay. Your Honor, I'd like to move R-50  
18 into the record.

19 JUDGE SOTOLONGO: Any objection?

20 MR. PETERSON: No.

21 JUDGE SOTOLONGO: All right. Respondent's 50 is  
22 admitted.

23 **(Respondent's Exhibit 50 received in evidence.)**

24 Q. BY MS. SCHAEFER: All right. Now, let's look at -- do  
25 you still have the exhibits that Mr. Peterson gave you in



1 front of you?

2 A. I do. Which one we looking at?

3 Q. All right. Do you have the coalition emails?

4 A. Yes.

5 Q. I want to look at the first page of the coalition  
6 emails. Now, this letter was drafted by an anonymous group  
7 of South Street TMs. Is that correct?

8 A. Yes, it is correct.

9 Q. Okay. And you were one of the people that helped draft  
10 this email?

11 A. I was.

12 Q. Now, I want to look at the first sentence. It says, we  
13 demand Joe Burton be held accountable for ways in which he  
14 implicated each and every Whole Foods employees in his  
15 personal political beliefs. Do you see that?

16 A. I do see it.

17 Q. Okay. And the way that Joe did that, that's a reference  
18 to Joe giving food and water to the police, correct?

19 A. That's a reference to that, yes.

20 Q. It was a reference to that?

21 A. Um-hum. Yes. Sorry.

22 Q. And you wrote that it was amidst the largest Civil  
23 Rights Movement of our time, correct?

24 A. My time, yes.

25 Q. And that's a reference to the Civil Rights Movement in

1 response to police murdering people of color?

2 A. Again, I think a lot of things were happening in 2020,  
3 inadequate access to healthcare in America during a global  
4 pandemic, et cetera, et cetera. There was a lot of  
5 discontent. It is a problem, yes.

6 Q. So when you described the Civil Rights Movement, you're  
7 saying the Civil Rights Movement had to do with access to  
8 healthcare?

9 A. I'm saying a Civil Rights Movement has a lot to do with  
10 equity, and that can be not getting murdered by police as --  
11 and having Medicaid. Those are --

12 Q. Okay. So when you say when he, meaning Joe Burton --  
13 the he in this sentence is Joe Burton, right? I'm looking at  
14 the bottom of the first page.

15 A. He implicated -- yes.

16 Q. Yeah. So it says, when he fed the Philadelphia police  
17 department amidst the largest Civil Rights Movement, CRM --

18 A. Um-hum.

19 Q. -- of our time, he directly undercut. So when you're  
20 talking about the Civil Rights Movement, that that -- that's  
21 a reference in that sentence to healthcare?

22 A. That is a reference to civil rights.

23 Q. Just generally in society?

24 A. Obviously.

25 Q. All right. And that societal Civil Rights Movement was

1 undercut by someone giving food and water to the police?

2 A. In part.

3 Q. Now, you testified that you thought it was wrong because  
4 Joe giving food and water to the police might make people  
5 think Whole Foods is supporting the police.

6 A. Tactless I think I used, crass -- I forget the operative  
7 term I used, the optics were bad, yeah.

8 Q. And you suggested it might draw ire, correct?

9 A. I did suggest that, yeah.

10 Q. You also here used the word, on page 2, you said that  
11 the actions of Joe Burton --

12 A. What paragraph?

13 Q. I'm sorry. Second paragraph.

14 A. Second full --

15 Q. Second paragraph of this page. I'm sorry. The first  
16 full paragraph, second sentence. We feel -- the actions of  
17 Joe Burton. Do you see that?

18 A. Yes.

19 Q. And it says that he endangered our safety. Is that  
20 correct?

21 A. That's correct, and also dissolved our trust.

22 Q. And when you use the word safety, that Joe's actions  
23 affected your safety, that Joe's actions affected your  
24 safety, do you acknowledge that taking a stand on this  
25 particular issue, like giving food and water to the police,

1 put team members at risk?

2 A. From the police.

3 Q. From the police. So giving food and water to the police  
4 was going to draw the ire of the police?

5 A. I think the concern was how many police were inside the  
6 store when the team members felt so uncomfortable. The team  
7 members were afraid of the police.

8 Q. So you testified that on June 1st though, you didn't see  
9 any police officers in the store, correct?

10 A. Correct.

11 Q. You didn't see any police officers in the store on June  
12 1st?

13 A. No.

14 Q. Okay. And the stores weren't being boarded up because  
15 the police were looting stores, correct?

16 A. No.

17 Q. So I'm asking a question. In your --

18 MR. RITTERMAN: Objection. It's argumentative and it's  
19 asking why management did this.

20 JUDGE SOTOLONGO: Sustained.

21 Q. BY MS. SCHAEFER: All right. So let's talk about Joe  
22 Burton's personal political views. You view the fight  
23 between Black Lives Matter and the police as a political one?

24 A. I don't know if I view it as a fight. It's certainly  
25 not a fair one.

1 Q. The dispute?

2 A. I think Black Lives Matter is a movement and the police  
3 are assisting it.

4 Q. And is that -- would it be fair to say that it's  
5 political, that they have political feelings about how the  
6 country should distribute resources and funding?

7 A. I think it's about human rights. I don't find that  
8 political.

9 Q. So the movement of Black Lives Matter is a human rights  
10 movement?

11 A. I think it's partially that, yeah, and certainly ties  
12 into the labor movements.

13 Q. So when, when -- is it -- my question, and I just want  
14 to be clear, was whether it's a political -- there's -- it's  
15 a political issue, correct?

16 MR. RITTERMAN: Objection. Asked and answered.

17 MS. SCHAEFER: No, I didn't get an answer.

18 MR. RITTERMAN: I believe my client has answered your  
19 question.

20 JUDGE SOTOLONGO: I'm not sure I agree. You can answer  
21 the question.

22 Q. BY MS. SCHAEFER: Do you view the dispute, your word,  
23 between Black Lives Matter and the police and the view of  
24 America as a political issue?

25 A. I think that's really reductive. I think in part, yes,

1 because I'm not a legislator. Legislators are going to view  
2 it as political whereas I do not.

3 Q. So I want to go back then to the sentence that says  
4 that, "Joe Burton implicated each and every Whole Foods  
5 Market employee in his personal political beliefs." That's a  
6 quote from the June 12th letter. Do you recognize that?

7 A. I do.

8 Q. Okay. So when it said there that it implicated Joe's  
9 personal political beliefs, it imputed those beliefs to you.  
10 Now, your testimony is it's not about a political issue.

11 MR. RITTERMAN: Objection. That's mischaracterizes the  
12 testimony. We're talking about two different things. The  
13 view of what Black Lives Matter stands for and the view of  
14 Joe Burton. So presenting it as though should be assumed to  
15 be contradictory. It's argumentative and inappropriate.

16 JUDGE SOTOLONGO: No, it's a fine line here. Let me ask  
17 you this. You used the word political when describing Joe's  
18 actions. Is that correct?

19 THE WITNESS: I did.

20 JUDGE SOTOLONGO: And that's because -- is that because  
21 you viewed his action as being pro-police?

22 THE WITNESS: I view his actions as at least in part a  
23 political sentiment, yes.

24 JUDGE SOTOLONGO: That political sentiment being taking  
25 the side of the police in the dispute between -- alleged

1 dispute the police and the Black Lives Matter movement?

2 THE WITNESS: Not advocating for human rights.

3 JUDGE SOTOLONGO: And so by taking the side of the  
4 police, you're advocating and -- the human rights position  
5 and yet you don't say that.

6 THE WITNESS: At least in part.

7 JUDGE SOTOLONGO: Okay. And you felt his actions would  
8 make people think that the rest of the store, you and the  
9 other employees, were siding also with police?

10 THE WITNESS: Agency was taken away from us in that  
11 element, yes.

12 JUDGE SOTOLONGO: Okay. All right. Well, that answered  
13 your questions.

14 Q. BY MS. SCHAEFER: Okay. I want to go back. You see the  
15 third paragraph -- third full paragraph, the last sentence  
16 there. Is it fair to say that you suggested that the  
17 appropriate -- that if Joe Burton were properly accountable,  
18 termination would be given.

19 A. If he was held properly accountable for the language of  
20 the gig, we believed that termination would be imminent and  
21 fair.

22 Q. And that termination was because he gave food and water  
23 to the police?

24 A. It was any willful act that may endanger you, coworkers,  
25 customers, vendors or property is what the gig says, and

1 that's what that sentence refers to, correct.

2 Q. And again, the issue that you felt, the safety issue  
3 that was raised was because by giving food and water to the  
4 police, was going -- protesters were going to come to the  
5 store or the police were going to come to the store?

6 A. It's very difficult to describe that time, but who knows  
7 who's coming to the store is kind of -- who knows ire in what  
8 direction. Identified Nazis were on the street with AR-15s.  
9 So -- but I can't be very specific about who I was afraid of,  
10 know that it was a scary time.

11 Q. I completely understand that, and I totally respect  
12 that. That's exactly the kind of thing I'm trying to  
13 understand, and now I understand it better. So here's my  
14 next question. If Joe was giving food and water to the  
15 police, does it stand to reason that wearing Black Lives  
16 Matter might also draw the attention of some of those scary  
17 elements on the street?

18 A. Less so and hope it's --

19 Q. You hope so.

20 A. Less so and hope it's them on the street. We have a  
21 particular customer base.

22 Q. Certainly there were Nazis with AR-15s on the street,  
23 too, right?

24 A. Right, they don't shop at Whole Foods.

25 Q. Hope not.



1 A. Typically.

2 Q. Now, in one of these demands in this paragraph you  
3 talked about Joe having one-on-one meetings with employees.  
4 Do you remember that?

5 A. Yes. So the second full paragraph.

6 Q. Correct.

7 A. Okay. Did you participate in any of those one-on-one  
8 meetings with Joe?

9 A. No, I did not.

10 Q. Okay. And, in fact, is it fair to say you told  
11 coworkers not to participate in these one-on-one meetings  
12 with Joe?

13 A. I absolutely encouraged people not to do that, yes.

14 Q. Okay. And was that because in your mind Joe's actions  
15 were not worthy of a hearing?

16 A. I think it was just the power dynamic it creates when  
17 you have to talk to the store team leader alone with the door  
18 closed.

19 Q. Do you think that what Joe did was -- never mind. Now,  
20 you asked for -- in your third demands for a storewide  
21 meeting. Do you recall that?

22 A. We did. We got that. Good for us.

23 Q. You did, and at the storewide -- and then the fourth  
24 demand was to utilize a text alert system for evacuating in  
25 emergencies. Is that correct?

1 A. Yeah.

2 Q. And by the way, at the time that you sent this email on  
3 June 12th, had you worn the phrase, Black Lives Matter to  
4 work?

5 A. I don't believe I had.

6 Q. Okay. Your testimony was the first time you wore it  
7 was --

8 A. The 22nd.

9 Q. -- the first Monday after the 19th. Is that correct?

10 A. Yes.

11 Q. Let me ask -- this is all going on in the context of a  
12 global pandemic, okay.

13 MR. RITTERMAN: Objection to this is going on.

14 JUDGE SOTOLONGO: Just be a little clearer for the  
15 record.

16 Q. BY MS. SCHAEFER: Do you know if any of the ASTLs or any  
17 of the STLs had ever lived through a global pandemic and a  
18 race riot at the same time?

19 MR. RITTERMAN: Objection. That's an argumentative,  
20 relevance and calls for speculation.

21 JUDGE SOTOLONGO: Overruled.

22 THE WITNESS: Do I keep going?

23 Q. BY MS. SCHAEFER: Had you ever lived through something  
24 like that?

25 A. No, but I think I did better than they did.

1 Q. People trying the best they can?

2 MR. RITTERMAN: Objection.

3 JUDGE SOTOLONGO: Sustained.

4 MS. SCHAEFER: I'll move on.

5 Q. BY MS. SCHAEFER: And there was a second demand letter  
6 that was sent. Do you recall being a part of the group that  
7 drafted that letter?

8 A. I was a part of it, yes.

9 Q. And I'm not asking for names, but was it the same  
10 anonymous group of two or three TMs that were involved in the  
11 first letter?

12 A. About, yeah.

13 Q. Okay.

14 A. Some wiggle room.

15 Q. Why did the coalition employees send a second letter?

16 A. To that point, nothing had been done.

17 Q. Now, the second letter reiterated all the demands in the  
18 first letter. Is that correct?

19 A. Yes. I'd have to rescan to see if anything was added,  
20 but it was a reiteration mainly.

21 Q. You can go ahead and do that.

22 A. Yes.

23 Q. Just for a second, I want to talk about the -- if you  
24 look at the top of this email, Monday, June 15th. Do you see  
25 that? That's the day of the week?

- 1 A. Correct, yes.
- 2 Q. Okay. And do you know if you worked that day?
- 3 A. I assume I would have, yeah.
- 4 Q. And the next day was the 16th, but I believe you didn't
- 5 work that day. Is that correct? A mental health day.
- 6 A. If that's the day it was, then that's the day it was,
- 7 yes.
- 8 Q. And on June 17th, there was a town hall with Joe Burton,
- 9 correct?
- 10 A. Correct, that's the day it took place, yeah.
- 11 Q. And did you attend that day?
- 12 A. The meeting with Joe Burton?
- 13 Q. The meeting?
- 14 A. I did not go.
- 15 Q. You worked that day?
- 16 A. That would have been a Wednesday, right?
- 17 Q. Yeah.
- 18 A. (No audible response.)
- 19 Q. Now, I want to ask you about the Bedford, New Hampshire
- 20 employees that you talked about. Do you know when you first
- 21 learned about the Bedford, New Hampshire employees?
- 22 A. No. I know that I could figure it out.
- 23 Q. Does June 10th sound right?
- 24 A. It does.
- 25 Q. On June 10th, you posted something on Instagram about

1 those employees?

2 A. Yes. The answer is I could have found out about it a  
3 day or 2 before but, yeah.

4 Q. But there was a time when you posted about the Bedford  
5 employees on your Instagram?

6 A. On my social media, yeah, the story.

7 Q. Okay. And what -- do you recall what you posted about  
8 those employees?

9 A. The text that I added on, if any, no.

10 Q. Was it your understanding that the employees in Bedford  
11 were wearing masks and said I can't breathe?

12 A. BLM, I don't remember exactly what they were wearing.  
13 I'm not going to say.

14 Q. Okay. Did you look at a -- did you ever look at  
15 pictures of what they were wearing?

16 A. I'm sure I did.

17 Q. Okay. Do you think the phrase, I can't breathe, is  
18 synonymous with the phrase Black Lives Matter?

19 A. Not synonymous but a prong of it, yeah.

20 Q. Okay.

21 A. They're related.

22 JUDGE SOTOLONGO: And you first learned about the New  
23 Hampshire employees through news media?

24 THE WITNESS: I don't know if it came to me through new  
25 media or was put into the Telegram chat.

1   **(Respondent's Exhibit 51 marked for identification.)**

2   Q.   BY MS. SCHAEFER: All right. I'm going to show you what  
3 I'm going to mark as R-51. Is this the post you just  
4 referenced? Have you seen this post before?

5   A.   Yes, I have.

6   Q.   And this is -- what is this?

7   A.   I reposted a post from Whole worker, Whole Foods Market,  
8 which is an Instagram where you can find a lot of information  
9 about Whole Foods and labor stuff that's going on.

10  Q.   Now, if we look in the top left-hand corner there,  
11 there's a little circle, right?

12  A.   Um-hum.

13  Q.   Okay. And that little circle is your avatar. Is that  
14 correct? It would have been your avatar at the time?

15  A.   I don't know the answer to that question in regards to  
16 how Instagram works.

17  Q.   Okay. Was there ever a time when you made the graphic  
18 in Exhibit 5 your profile picture on Instagram?

19  A.   It sounds like something I could have done. Hindsight  
20 2002, I wouldn't have, but --

21  Q.   Okay.

22  A.   -- yeah.

23  Q.   Okay.

24  A.   I just don't know how that function works.

25  Q.   Understood.

1 A. I have R-51 on the page.

2 Q. I got you. Okay. Sorry. I apologize. I apparently  
3 referenced it as R-5. It's R-51. Apologies. Now, this --  
4 these employees --

5 A. Sometime in the next 10 to 15 minutes, may I go to the  
6 restroom.

7 MS. SCHAEFER: Why don't we do that -- Your Honor, can  
8 we do that now? Can we take a break?

9 MR. PETERSON: yeah, that's fine with me.

10 MS. SCHAEFER: Okay.

11 THE WITNESS: I just have to go to the restroom.

12 MS. SCHAEFER: Can we take a break?

13 **JUDGE SOTOLONGO: Yeah. Let's go off the record.**

14 **(Off the record from 3:18 p.m. to 3:26 p.m.)**

15 **JUDGE SOTOLONGO: Let's go back on the record.**

16 Q. BY MS. SCHAEFER: So we're just looking at R-51. All  
17 right. I think I'm just going to ask this again because  
18 there was a break, and I can't remember if I asked you this  
19 question, but were you aware that Kayla Green was wearing a  
20 mask that said I can't breathe?

21 A. I imagine I was sure at the time. Right now, my memory,  
22 I wouldn't have known.

23 Q. Okay. And you're aware that Whole Foods, at least in  
24 Bedford, was taking the position that the phrase Black Lives  
25 Matter on a mask was not within the dress code. Is that

1 correct?

2 A. Yes.

3 MS. SCHAEFER: Your Honor, I'll move R-51 into the  
4 record.

5 JUDGE SOTOLONGO: Any objection?

6 MR. PETERSON: No, Your Honor.

7 JUDGE SOTOLONGO: All right. Respondent's 51 is  
8 admitted.

9 **(Respondent's Exhibit 51 received in evidence.)**

10 Q. BY MS. SCHAEFER: So knowing that Kayla -- do you know  
11 the other person who is in R-52 by the way? Do you recall  
12 that person?

13 A. I could surmise that it's Lylah.

14 Q. Okay. Knowing that Kayla and Lylah in Bedford were not  
15 being permitted to work in violation of the dress code while  
16 they were wearing Black Lives Matter masks, a team member  
17 suggested that on June 19th employees wear Black Lives Matter  
18 to work, correct?

19 A. Correct. At least in part, yeah. That's -- it was an  
20 inciting incident.

21 Q. Okay. And the idea was proposed so that it would be  
22 visible to customers, who would notice the phrase on the team  
23 members. Is that correct?

24 A. Visible like a collective action visible I believe.  
25 Visible both physically and visible that multiple people are



1 doing the same thing on the same day.

2 Q. Right. Collective action.

3 A. Correct.

4 Q. And you knew there was a risk that if you wore it, Whole  
5 Foods would tell you that you weren't in dress code, correct?

6 A. At that time, I did know, yes.

7 Q. And was part of the idea of wearing Black Lives Matter  
8 that it would result in the store very visibly standing on  
9 the right side of humanity?

10 A. Definitely a phrase that was used in the Telegram chat  
11 almost verbatim --

12 Q. Okay.

13 A. -- by someone that's not me.

14 Q. All right. And the right side of humanity meaning not  
15 with Joe and the cops?

16 A. I mean you can just read it if you want.

17 Q. That was a sentiment that was expressed by your team  
18 members?

19 A. By 1 team member out of 16.

20 Q. Okay. And --

21 A. I'm sure there was some agreement and sentiment.

22 Q. Yeah. In fact, I think you wrote back in favor.

23 A. In favor of what?

24 Q. In response to the suggestion.

25 A. In favor that we wear the pins as part of a collective

1 action?

2 Q. One of your team members wrote that wearing the pins  
3 would result in the store very visibly standing on the right  
4 side of humanity, the right side of humanity meaning not with  
5 Joe and the cops. The next post that you responded you  
6 typed, In favor.

7 A. Because we were voting on what to do.

8 Q. And you supported that. You were in favor.

9 A. I supported wearing pins, yes.

10 Q. Okay. And was the suggestion made that if when asked  
11 why we're wearing things that are not in the dress code, you  
12 could say it was because the store has taken the side of the  
13 police against black lives, and we want to make it very clear  
14 that we, the team members, do not hold that position.

15 A. I'm sure it was said.

16 Q. Okay. Do you agree with that sentence?

17 A. In part, yeah.

18 Q. Okay. And which part do you disagree with?

19 A. Can you read it again?

20 Q. Sure.

21 MR. PETERSON: I would object on relevance.

22 JUDGE SOTOLONGO: Overruled. Go ahead.

23 Q. BY MS. SCHAEFER: When -- the team members when asked  
24 why we're wearing things that are not to dress code,  
25 employees would respond it's because the store has taken the

1 side of the police and against black lives. And we want to  
2 make it very clear that we, the team members, do not hold  
3 that position. Which part of that sentence do you disagree  
4 with?

5 A. I think it's a part, makes a whole. So I don't disagree  
6 with the sentiment but I think there's more to it.

7 Q. But that was the sentiment --

8 A. That was a sentiment of a group of 16.

9 Q. That you responded in favor?

10 A. To wearing the pins. I mean we were literally voting on  
11 what to do and when to do it.

12 Q. Okay. And with all that as a background, the employees  
13 voted in favor of wearing the phrase, Black Lives Matter, on  
14 June 19th?

15 A. Altogether.

16 Q. Okay. In solidarity with the Black Lives Matter  
17 movement, correct?

18 A. At least on the micro level of our store, too, okay.  
19 So.

20 Q. And then after you made that decision, you wrote the  
21 June 19th demand letter or I'm sorry, June 18th demand  
22 letter. Can you pull that up in front of you please?

23 A. One second.

24 Q. That's the last one.

25 A. The last letter.

1 Q. And in this letter, if you look on the second page of  
2 the letter, and the last page of the exhibit, the third  
3 paragraph down in bold.

4 A. Um-hum.

5 Q. It says, more importantly, tomorrow, Friday, the 19th,  
6 we encourage Juneteenth. We encourage all team members to  
7 wear Black Lives Matter pins, masks, shirts, et cetera, in  
8 solidarity with the Black Lives Matter movement --

9 A. Um-hum.

10 Q. -- correct?

11 A. It does say that, yes.

12 Q. Okay. And you were part of the group that crafted this  
13 letter?

14 A. I was.

15 Q. And it was the same group of two or three team members  
16 that drafted the previous letter?

17 A. There had been a little more shimmy and shake for the  
18 third one.

19 Q. Specifically what does that, shimmy and shake mean?

20 A. I was scared to send the letter. So someone else hit  
21 send for the new email.

22 Q. Understood, but you were part of the group, the same  
23 group that drafted --

24 A. I was part of it. Someone else took more of a  
25 leadership role than I had.

- 1 Q. Okay.
- 2 A. That's all I mean.
- 3 Q. And when you were encouraging TMs to wear Black Lives  
4 Matter pins, masks and shirts, would that include the  
5 phrase -- did that include the phrase, Black Lives Matter, as  
6 the phrase --
- 7 A. Yes.
- 8 Q. -- people were going to wear?
- 9 A. Yes.
- 10 Q. And would the phrase, I can't breathe, be included in  
11 that?
- 12 A. It's not textual but I'm sure it could be.
- 13 Q. Do you know if anyone wore the phrase, I can't breathe,  
14 that day?
- 15 A. I didn't see any, I can't breathe. I wasn't there but I  
16 didn't hear a lot of people from my store wearing anything  
17 related to I can't breathe.
- 18 Q. Okay. But that's what --
- 19 A. I'm sure so, yeah.
- 20 Q. -- people had worn, correct?
- 21 A. I'm sure so.
- 22 Q. And you -- the decision was made to also reference Kayla  
23 and Lylah in this letter, correct?
- 24 A. Correct.
- 25 Q. Okay. And you were doing it -- you were violating the

1 dress code to stand in solidarity with Lylah and Kayla. Is  
2 that correct?

3 A. At least in part, and then we say as a coalition, we  
4 stand against all overt and covert anti-blackness globally,  
5 nationally, locally and in our store.

6 Q. Right. So this was a global --

7 A. Global also encapsulating Whole Foods Market on South  
8 Street.

9 Q. Yes.

10 A. And how it relates to labor conditions.

11 Q. All right. So it was Whole Foods Market employees  
12 taking a stand against overt, covert anti-blackness globally,  
13 nationally, locally and in the store? So --

14 A. In our store.

15 Q. -- in our store, was also global?

16 A. Yeah. I'm not arguing that things were happening beyond  
17 our store.

18 Q. Okay. Now, you testified that you went and picked up a  
19 bag of 60 Black Lives pins that said Black Lives Matter,  
20 correct?

21 A. I did do that.

22 Q. We saw a picture of them?

23 A. Yeah.

24 Q. You said your friend made them?

25 A. Yes, unrelated to Whole Foods, this person.

- 1 Q. Does the person make pins?
- 2 A. They had a pin maker.
- 3 Q. Okay. So you selected the phrase -- my question is this
- 4 isn't a store, correct?
- 5 A. Correct.
- 6 Q. Okay. And you selected the phrase that we would be --
- 7 that you asked to make?
- 8 A. I suppose so. I said can you make Black Lives Matter
- 9 pins. I didn't specify BLM.
- 10 Q. Got it. You didn't specify any other phrase, correct?
- 11 A. I didn't.
- 12 Q. Okay. So you just testified -- reminded us that you did
- 13 not work on June 19th, correct?
- 14 A. Correct.
- 15 Q. And so you don't know how many employees ended up
- 16 wearing the Black Lives Matter pins on June 19th, correct,
- 17 from a firsthand knowledge of that?
- 18 A. The Telegram people recounted what they saw and what
- 19 they were wearing. That's my knowledge.
- 20 Q. Okay. And roughly how many people were responsive in
- 21 the Telegram chat?
- 22 A. We could count.
- 23 MR. PETERSON: Objection. Vague.
- 24 MS. SCHAEFER: I'm drawing -- okay. That's fair.
- 25 Q. BY MS. SCHAEFER: You said there -- you testified there

1 were roughly 16 people that were active in the chat?

2 A. And it started to dwindle. So by June 19th, we had  
3 probably lost some to be honest with you.

4 Q. Okay.

5 A. In terms of active.

6 Q. So are we talking about five or six people that were  
7 telling you in the chat that they were wearing the Black  
8 Lives Matter pins?

9 A. We could check.

10 **(Respondent's Exhibit 52 marked for identification.)**

11 Q. BY MS. SCHAEFER: All right. So I want to show you what  
12 I'm going to mark as R-50 --

13 JUDGE SOTOLONGO: 52.

14 Q. BY MS. SCHAEFER: -- 52. Take a look at this document,  
15 read it over. And then just look up when you're finished.  
16 Do you recognize this document?

17 A. I do.

18 Q. And this is an Instagram post that you posted on June  
19 19th?

20 A. Yes. Reposted, yes.

21 Q. I'm sorry. You have to speak up.

22 A. Reposted, yes.

23 Q. You reposted it.

24 A. I might have just flat out posted it, too. I'd have to  
25 check it.



1 JUDGE SOTOLONGO: Was this on Instagram?

2 THE WITNESS: Yes.

3 JUDGE SOTOLONGO: Okay.

4 THE WITNESS: This is an Instagram story.

5 JUDGE SOTOLONGO: Okay.

6 Q. BY MS. SCHAEFER: Did you make this graphic?

7 A. I did not make this graphic, no. I saw it and said,  
8 yes, now maybe here's my input but I did not make this one.

9 Q. So your input into some of the story was graphic?

10 A. Not enough.

11 Q. Okay. But --

12 A. Yes.

13 Q. Okay.

14 A. I said go forth.

15 Q. And you decided to repost the graphic on your personal  
16 Instagram account, correct?

17 A. I did.

18 Q. And do you see at the top -- and you posted this on June  
19 19th, correct?

20 A. Correct.

21 Q. And you were not working that day?

22 A. I was not.

23 Q. Okay. And at the top, there's a reference to June 1st.  
24 Do you see that? In the first paragraph on the right-hand  
25 side?

- 1 A. Yes.
- 2 Q. On June 1st.
- 3 A. Um-hum.
- 4 Q. Do you see that?
- 5 A. I do.
- 6 Q. Okay. And this is a reference to Joe Burton giving food  
7 and water to the police. Is that correct?
- 8 A. Correct.
- 9 Q. And the graphic goes on to say the protests taking place  
10 were part of an international uprising against white  
11 supremacy and police terror following the deaths of George  
12 Floyd, Breonna Taylor and Ahmaud Arbery. Do you see that?
- 13 A. I do.
- 14 Q. Do you agree that that's what the protests were about?
- 15 A. Again in part, for sure.
- 16 Q. And you wanted the right to outwardly support the  
17 protests while you were working at Whole Foods, right?
- 18 A. That's really reductive.
- 19 Q. This entire case is about that question. So --
- 20 A. Again, a lot of this was about the micro level and how  
21 it related to labor conditions in the instance of my store.  
22 So --
- 23 Q. So let's --
- 24 A. -- we asked --
- 25 Q. -- let's talk about that. It says these protests were

1 part of an international uprising against white supremacy and  
2 the police terror following the deaths of George Floyd,  
3 Breonna Taylor and Ahmaud Arbery. Do you see that?

4 A. I do.

5 Q. Okay. And that's -- that sentence is in direct response  
6 to Joe Burton giving food and water to the police at the  
7 South Street store --

8 A. I understand.

9 Q. -- correct?

10 A. I do.

11 Q. Okay. You started raising here money for Morris House.  
12 Can you tell what Morris House is?

13 A. The Morris Home in Philadelphia is a trans outreach type  
14 of facility in West Philadelphia particularly for trans women  
15 of color.

16 Q. And so when it says cash hashtag, that's a reference to  
17 an opportunity to donate money to the Morris House. Is that  
18 correct?

19 A. It is.

20 Q. Okay. I want to move to -- let me see this. I'm going  
21 to show you what I'm going to mark as --

22 MS. SCHAEFER: Your Honor, I'm sorry. Can I move 52  
23 into the record please?

24 JUDGE SOTOLONGO: Any objection to Respondent's 52?

25 MR. PETERSON: No.

1 JUDGE SOTOLONGO: Okay. Respondent's 52 is admitted.

2 **(Respondent's Exhibit 52 received in evidence.)**

3 **(Respondent's Exhibit 53 marked for identification.)**

4 Q. BY MS. SCHAEFER: All right. I'm going to show you what  
5 I've marked as R-53. Do you recognize this document?

6 A. I do.

7 Q. And this is another Instagram story that you posted. Is  
8 that correct?

9 A. Yes.

10 Q. And this is the same language that was in General  
11 Counsel's Exhibit 51.

12 A. The General Counsel --

13 Q. It's this one.

14 A. Yeah. Oh, yeah. Similar. I don't know if they're had  
15 been any changes but generally, yes.

16 Q. And you testified that this was shared in the chat and  
17 then members of the chat group would share it on their  
18 Instagram, correct?

19 A. Yeah.

20 Q. And in this case, on June 20th, again you posted, in  
21 addition to gifting \$120 worth of merchandise to the police,  
22 store leadership is sending team members home for Black Lives  
23 Matter pins and masks. Do you see that?

24 A. I do.

25 Q. So you drew a direct connection between store leadership

1 at Whole Foods Market sending -- I'm sorry -- donating  
2 food -- \$120 worth of merchandise to the police and team  
3 members wearing Black Lives Matter pins, correct?

4 A. In addition. It depends on how you --

5 MS. SCHAEFER: Your Honor, I'd like to move R-53 into  
6 the record.

7 JUDGE SOTOLONGO: Any objection to the admission of R-  
8 53?

9 MR. PETERSON: No, Your Honor.

10 JUDGE SOTOLONGO: Then Respondent's 53 is admitted.

11 **(Respondent's Exhibit 53 received in evidence.)**

12 Q. BY MS. SCHAEFER: Now, it says here that team members  
13 were being sent home for wearing Black Lives Matter pins and  
14 masks. Isn't it true that leadership gave TMs the option to  
15 comply with the dress code and that TMs opted to leave  
16 instead?

17 A. They were not allowed to stay if they continued to wear  
18 the pin.

19 Q. But they were given the option of removing it and  
20 wearing a compliant mask or taking the pin off.

21 A. So far as I understand it.

22 Q. No one ever gave you that option? No one ever told you  
23 take the pin off or go home?

24 A. No, that's not what happened to me.

25 Q. Okay. And the two people that were sent home, do you

1 know if they were wearing the Black Lives Matter on their  
2 facemask?

3 A. We could check. I know one was for certain.

4 Q. But you were not wearing it on your facemask?

5 A. I was not.

6 Q. You were wearing it on your hat?

7 A. And later but, yes.

8 Q. Okay. And at the point that you shared R-52 and R-53,  
9 so June 19th, June 20th, you had not set foot in Whole Foods  
10 wearing any Black Lives Matter phraseology on your person.  
11 Is that correct?

12 A. I had not.

13 Q. Okay. Now, you testified that in reaction to Whole  
14 Foods not allowing employees to wear Black Lives Matter  
15 messaging, that you organized what you described as a picket.  
16 Is that correct?

17 A. Yes.

18 Q. And we looked at R -- I'm sorry -- GC, if you could pull  
19 up GC-52.

20 A. Here we go. Backing up. Got it.

21 Q. Did you create this?

22 A. Yeah, I had a leadership role in creating this.

23 Q. Okay.

24 A. It was on my computer.

25 Q. Gotcha. And you shared it with your fellow team members

1 who shared it online. Is that correct?

2 A. Yes.

3 Q. And the graphic says that the gathering is to protest  
4 Whole Foods store leadership sending home team members for  
5 wearing Black Lives Matter pins. Is that correct?

6 A. Yes.

7 Q. In the first paragraph.

8 A. Um-hum.

9 Q. And this protest took place on June 21.

10 A. Sunday.

11 Q. And again, you attended this protest?

12 A. I did.

13 Q. And again to that point, you yourself had not worn  
14 anything that said Black Lives Matter?

15 A. Not inside the store.

16 Q. Now, again here in the second paragraph you see it says,  
17 in addition to store leadership sending team members home for  
18 outwardly supporting BLM, Whole Foods on South Street  
19 provided the Philadelphia Police Department with \$120 in  
20 merchandise amidst global protests against police brutality,  
21 correct?

22 A. Correct.

23 Q. Okay. And you demanded that Whole Foods Market on South  
24 Street acknowledge Black Lives Matter, correct?

25 A. A little vague but, yes, I did.

1 Q. Okay. So when you wrote that employees were outwardly  
2 supporting BLM, dare to say that's a reference to the global  
3 protests against police brutality?

4 A. I believe that Black Lives Matter is about a lot of  
5 things. One of them is as it pertains to police brutality.  
6 Another is labor conditions in America. Another is  
7 healthcare. I think it is a holistic movement.

8 Q. But the purpose of this protest was to protest Whole  
9 Foods Market not permitting employees to wear Black Lives  
10 Matter --

11 MR. PETERSON: Objection. Asked and answered.

12 Q. BY MS. SCHAEFER: -- in support of police brutality?

13 JUDGE SOTOLONGO: Overruled. You can answer.

14 THE WITNESS: Okay. Can you say it one more time?

15 MS. SCHAEFER: You know what? The document speaks for  
16 itself.

17 JUDGE SOTOLONGO: Okay.

18 Q. BY MS. SCHAEFER: You drafted -- you helped -- the  
19 document was created on your computer --

20 A. I took a leadership role in the drafting and  
21 disseminating of this text.

22 Q. Okay. And you wanted the ability to support the global  
23 movement against police brutality in the workplace by wearing  
24 the phrase, Black Lives Matter or BLM, correct? That was the  
25 goal of the protest?



1 A. I wanted to be able to wear BLM in the workplace without  
2 fear of repercussions.

3 Q. And you wanted Whole Foods to acknowledge Black Lives  
4 Matter?

5 A. It would have been nice.

6 Q. Okay. And specifically, what you mean by that is to say  
7 Black Lives Matter, right?

8 A. I think what I mean is that we'd be allowed to wear it  
9 and not be how it's shown. That's not what this sentence  
10 says. So.

11 Q. Well, when Whole Foods said racism has no place here,  
12 that was not enough, correct?

13 A. No, no.

14 Q. That's not enough?

15 A. No, they have to say --

16 Q. They have to say Black Lives Matter, right?

17 A. Yes.

18 Q. And that's because it's not enough just to be -- to not  
19 be racist. You have to be anti-racist. Is that the goal of  
20 the movement?

21 A. The goal of Black Lives Matter?

22 Q. Yeah.

23 A. For people to be anti-racist and the Government to be  
24 anti-racist, I would imagine so.

25 Q. And anti-racist is, just so we're drawing a clear

1 distinction here, that's an affirmative anti-racist as  
2 opposed to taking no position?

3 A. I would agree.

4 Q. Okay. Now, you testified that someone from Black Lives  
5 Matter Philadelphia sent some people to join the protest?

6 A. I believe that is exactly what happened. I believe one  
7 of the speakers at the protest was affiliated with a chapter  
8 of BLM.

9 Q. Okay.

10 A. I cannot prove or provide more on that.

11 Q. Okay. But Black Lives Matter affiliate was given a  
12 heads up. Black Lives Matter Philadelphia, is that a -- what  
13 is that?

14 A. And the way I understand it, a chapter of organizing in  
15 the -- so each city I believe has a chapter.

16 Q. And it's a chapter of the organization, Black Lives  
17 Matter. Is that correct?

18 A. Insofar as I understand it, there are people in  
19 leadership roles.

20 Q. And Black Lives Matter is a -- the Black Lives Matter  
21 Global Network, which is an actual organization that lacks  
22 (ph.) money and takes positions on things. Is that correct?

23 A. So far as I understand it.

24 Q. The Black Lives Matter Global Network take positions  
25 that are controversial.

1 MR. PETERSON: Objection. Vague and relevance.

2 JUDGE SOTOLONGO: Overruled.

3 THE WITNESS: Not to me.

4 Q. BY MS. SCHAEFER: Does everyone agree that Black Lives  
5 Matter Global Network's positions are uncontroversial? I'll  
6 rephrase.

7 JUDGE SOTOLONGO: Yeah.

8 Q. BY MS. SCHAEFER: Does Black Lives Matter Global Network  
9 take a position on Israel and Palestine and the conflict  
10 there?

11 A. I'm sure they do. I don't know. I can infer what the  
12 position is.

13 Q. You're not familiar with their position on those issues?

14 A. I'm not immediately familiar with their position but I  
15 could infer.

16 Q. Are you aware that at times Black Lives Matter Global  
17 Network has been accused of anti-Semitism because of their  
18 position on Israel?

19 A. I'm not aware, no.

20 Q. Okay. Black Lives Matter Global Network takes a  
21 position on defunding the police. Is that correct?

22 A. Insofar as I know.

23 Q. And they're supportive of efforts to defund the police,  
24 correct?

25 A. Insofar as I know.

1 Q. Some of those efforts, or at least that phrase, is  
2 controversial, correct?

3 A. Mainly to the policy I'd imagine.

4 Q. Politically controversial, too, correct?

5 A. Again, I don't feel comfortable with being pigeonholed  
6 into political as an operative phrase here. I think  
7 everything is really tied together. I don't think it's  
8 autonomously political.

9 Q. Is it fair to say the politicians are the people that  
10 would make the determination about funding levels for police  
11 departments?

12 A. It's certainly fair to say that. I'm not a legislator.

13 Q. Understood.

14 A. I wish I were.

15 Q. And there was a concern that hosting a protest without  
16 giving Black Lives Matter a heads up might be stepping on  
17 their toes. Is that correct?

18 A. Correct.

19 Q. Okay. Now, during the protest, were there employees --  
20 or I'm sorry. Were there -- there were Whole Foods employees  
21 there you testified?

22 A. The June 21st outside Whole Foods gathering?

23 Q. Yes, during that protest?

24 A. Yes.

25 Q. There were non-Whole Foods employees there, correct?

1 A. Yes.

2 Q. Now, we looked at some pictures. We're going to look at  
3 a couple more but do you recall seeing signs that said Black  
4 Lives Matter at the protest?

5 A. I'm sure they were there, yes.

6 Q. Okay. And signs that said I can't breathe?

7 A. I'm sure they were there.

8 Q. And someone held a sign that said Whole Foods save Black  
9 Lives Matter challenge. Is that correct?

10 A. I have seen that one recently.

11 Q. Okay. And is that in reference to the ice bucket  
12 challenge or the same idea?

13 A. Yeah, they're like 3 years too late, but I'm sure so.

14 Q. Okay. And the idea was that Whole Foods should say  
15 Black Lives Matter, correct?

16 A. Not by sign. I'm inferring. So, yes.

17 **(Respondent's Exhibits 54 and 55 marked for identification.)**

18 Q. BY MS. SCHAEFER: We're up to R -- I'm going to mark a  
19 document as R-54 and another document as R-55. All right.  
20 So the first thing I'm going to ask you to look at is R-54.  
21 You testified about the Flickr account. Flickr is like an  
22 online photo repository website. Is that right?

23 A. Repository is a good term.

24 Q. Okay. And there were some photos that were introduced  
25 GC Exhibit --

1 A. 53.

2 MR. PETERSON: 53.

3 Q. BY MS. SCHAEFER: -- 53, yeah. And you looked through  
4 that Flickr account when it was posted?

5 A. When it was posted, for sure.

6 Q. Okay. And R-54 is just two additional photos from that,  
7 from that account. Do you recognize the sign in the first  
8 picture? It's a woman in blue shorts or a person in blue  
9 shorts. Do you see that?

10 A. Um-hum.

11 Q. Okay. And the background there's a sign that someone's  
12 holding that says Black Lives Matter. Do you see that?

13 A. In the back, yes.

14 Q. Okay. Do you recognize that sign and those people from  
15 that day?

16 A. I recognize the first person in the forefront of the  
17 photograph.

18 Q. In the blue shorts?

19 A. In the blue shorts, yeah.

20 Q. Okay.

21 A. I believe the person them, too, but it's a little cut  
22 off.

23 Q. And then this is just another photo from that Flickr  
24 account of the protest as well?

25 A. Um-hum. Yes.

1 Q. Can you see the person -- I'm going to test your  
2 eyesight for a second. But there's a person in shorts in the  
3 middle of the picture holding a white sign.

4 A. Gotcha.

5 Q. You see that sign?

6 A. I do.

7 Q. What does it say?

8 A. Well, I don't want to be a smart aleck but I imagine it  
9 says I can't breathe.

10 MS. SCHAEFER: Your Honor, I'd like to move --

11 JUDGE SOTOLONGO: Wait. Which --

12 MS. SCHAEFER: Sorry. Last photo.

13 JUDGE SOTOLONGO: Of 54?

14 MS. SCHAEFER: Yes, 54.

15 Q. BY MS. SCHAEFER: It looks like -- it's this one.

16 A. Yes.

17 JUDGE SOTOLONGO: Okay.

18 MS. SCHAEFER: And then it's --

19 JUDGE SOTOLONGO: Oh, I see. Okay. I see it now. It's  
20 kind of fading into the brick wall there for a little bit.

21 So I --

22 MS. SCHAEFER: Yeah.

23 JUDGE SOTOLONGO: -- finally spotted it. Now I get it.  
24 Okay. All right.

25 MS. SCHAEFER: Your Honor, I'd like to move R-54 in.

1 JUDGE SOTOLONGO: Any objection?

2 MR. PETERSON: No, Your Honor.

3 JUDGE SOTOLONGO: Okay. Respondent's 54 is admitted.

4 **(Respondent's Exhibit 54 received in evidence.)**

5 Q. BY MS. SCHAEFER: And then if you could look at the  
6 exhibit marked R-55.

7 A. Look at me.

8 MS. SCHAEFER: And I just want to, for the record, point  
9 out those numbers are ours but they are -- it's really just a  
10 formatting thing.

11 Q. BY MS. SCHAEFER: Now, you testified that BLM Philly was  
12 notified of the protest. They took pictures and posted them  
13 online. Are you aware of that?

14 A. I was.

15 Q. You were or were not?

16 A. That Black Lives Matter Philly came and took photographs  
17 and posted them online?

18 Q. Yeah.

19 A. I wasn't aware of that expressly, no.

20 Q. Okay. Have you ever seen any of these photos before?  
21 The first one is a woman in blue jeans holding a sign that  
22 says Black Liberation. Do you see that?

23 A. I do, yes.

24 Q. Do you recognize that person --

25 A. In the blue jeans?



1 Q. -- holding that sign?

2 A. Yeah.

3 Q. Who is that person? Is it a team member or is it a

4 member of the public?

5 A. It is a team member who was fired in proximity to this.

6 Q. Okay. And then the next photograph is -- is that you?

7 A. That's me.

8 Q. Okay.

9 A. I don't like signs by the way.

10 Q. Did you make this sign?

11 A. It doesn't look like I did.

12 Q. Okay.

13 A. Yeah.

14 Q. But the sign is a reference to collecting money for

15 Morris Pivots (ph.) House or Home?

16 A. Yes, Home I think. House.

17 Q. And then in the third picture, that's also you?

18 A. It is. Look at me.

19 Q. And the -- and I want to draw attention to your facemask

20 there. Do you see your facemask there?

21 A. I do.

22 Q. Do you have something on your facemask?

23 A. Yes.

24 Q. Is that the button?

25 A. It is.

1 Q. You were wearing it on your facemask?

2 A. At this time, really.

3 Q. Okay. Had you done that at the store before while you  
4 were working?

5 JUDGE SOTOLONGO: Does that mean wearing the pin on your  
6 mask?

7 THE WITNESS: Yeah, I mean I feel as though this would  
8 indicate that I did wear it on my mask. I also wore it on my  
9 hat. So I guess I don't know at what point it was on my hat  
10 or my mask, but neither my mask or my hat were issued by  
11 Whole Foods.

12 Q. BY MS. SCHAEFER: Okay. But the -- you understood that  
13 some other TMs were wearing the pin on their facemasks. Is  
14 that right?

15 A. I did understand that, yes. And some masks at that  
16 point were being disseminated that were Whole Foods branded.  
17 That started happening I believe.

18 Q. And then if you just look at the next picture, it's  
19 marked 10 but it's actually just page 4 of the exhibit that  
20 Bezos can admit Black Lives Matter, why can't you?

21 A. Yes.

22 Q. Is that Leea Kelly?

23 A. Yes.

24 Q. Leea Kelly is a Charging Party.

25 A. Okay.

1 MS. SCHAEFER: Your Honor, I'd like to move in R-55.

2 JUDGE SOTOLONGO: Any objection?

3 MR. PETERSON: No, Your Honor.

4 THE WITNESS: This is why you don't bring signs.

5 JUDGE SOTOLONGO: All right. Respondent's 55 is  
6 admitted.

7 **(Respondent's Exhibit 55 received in evidence.)**

8 JUDGE SOTOLONGO: Mr. Peterson, Ms. Schaefer just passed  
9 you the exhibits erased. They're all 55 and 54. You've got  
10 some work to do.

11 MR. PETERSON: I figured it was inevitable, Your Honor.

12 THE WITNESS: My poor computer.

13 Q. BY MS. SCHAEFER: You attended this protest on your day  
14 off. Is that correct?

15 A. I did.

16 Q. And, you shared the invitation for this protest on your  
17 social media, correct?

18 A. Correct.

19 Q. And after the protest, you posted a photo on your social  
20 media with the caption, when we fight we win, do not shop at  
21 Whole Foods Market ever again, correct?

22 A. I'm sure I did.

23 Q. Do you know you did?

24 A. Yes.

25 Q. Okay.

1 A. Yeah.

2 Q. And just to be clear, you still work at Whole Foods  
3 today, correct?

4 A. Yes.

5 Q. Yes.

6 A. Yeah.

7 Q. You didn't receive any discipline for wearing a Black  
8 Lives Matter pin or for attending this protest. Is that  
9 correct?

10 A. I received no discipline for attending the protest. It  
11 was my impression that I was being disciplined when I was  
12 pulled into the conference room.

13 Q. But you didn't receive anything in writing as a  
14 corrective action?

15 A. Lots of people hadn't received anything in writing.

16 Q. Okay. I --

17 A. I received nothing.

18 Q. You received nothing.

19 A. I received nothing.

20 Q. Okay. And just to be clear, again -- all right. Never  
21 mind.

22 JUDGE SOTOLONGO: There's no allegation this witness has  
23 been disciplined, is there?

24 MS. SCHAEFER: That's correct. There's no allegation  
25 this witness has been disciplined.

1 Q. BY MS. SCHAEFER: All right. Now, I want to talk about  
2 the town hall for just a second. The town hall that took  
3 place on the 23rd, you said you raised the issue of Meghan  
4 Murray's termination, correct?

5 A. Correct.

6 Q. She was disciplined. You said that Meghan Murray was  
7 terminated because they were whistleblower is how you  
8 described it, correct?

9 A. Correct.

10 Q. And Meghan Murray was terminated by Whole Foods for  
11 threatening the life of Joe Burton, correct?

12 MR. PETERSON: Objection. Relevance and calls for  
13 speculation.

14 JUDGE SOTOLONGO: I -- we're going astray here. I'm not  
15 sure what termination this is. It was not within the  
16 complaint.

17 MS. SCHAEFER: That's fine.

18 JUDGE SOTOLONGO: We're straying to -- into an issue  
19 that is not at play here.

20 MS. SCHAEFER: Okay. I'm just going to ask one more  
21 question, and then --

22 JUDGE SOTOLONGO: Okay. Go ahead.

23 Q. BY MS. SCHAEFER: Were you wearing the phrase -- Meghan  
24 Murray is white, correct?

25 A. Meghan Murray is white.

1 Q. Okay. And you weren't wearing the phrase Black Lives  
2 Matter to protest Meghan Murray's termination, correct?

3 A. I was not wearing the phrase Black Lives Matter to  
4 express like protest that Meghan Murray had been fired.

5 Q. So when you went to -- you testified that between June  
6 22nd -- you wore the mask when you went to work starting on  
7 June 22nd. So there was the Monday, Tuesday, would be the  
8 22nd and 23rd. This would be easier with a calendar.

9 A. It would.

10 Q. The following Monday was then June 29th and 30th. And  
11 your testimony is that it wasn't until Jenny Ross spoke to  
12 you that anyone said anything --

13 A. No one said anything at all.

14 Q. Okay.

15 A. Yes.

16 JUDGE SOTOLONGO: And that was July 6th.

17 THE WITNESS: July 6th. So it was the following week  
18 after that.

19 JUDGE SOTOLONGO: Okay.

20 Q. BY MS. SCHAEFER: Now, at the town hall, I just want to  
21 be clear that there's -- you raised the issue of a procedure  
22 for dealing with abusive customers. Is it fair to say if a  
23 customer is abusive to you, you tell your ASTL or tell  
24 your -- tell the store team leader about the incident?

25 A. It would be fair to say, yes.

1 Q. Yeah. Or you could call the hotline if something needed  
2 to be done. There's a hotline you can call, correct?

3 A. Yeah, the trust had been dissolved in that hotline but  
4 it does exist.

5 Q. Okay. So there are procedures in place to deal with an  
6 incident if a team member reports it to management, that  
7 management can take action. Is that correct?

8 A. I think the procedure we're looking for was what happens  
9 after we say what happened.

10 Q. So you wanted insight into that process?

11 A. I think in the instance of whatever was expressed, we  
12 don't want the abusive customers to come back in the store.  
13 So.

14 Q. But their procedure did exist. You just -- and the  
15 issue was maybe you didn't have insight into the conversation  
16 between the store team leader and the team member?

17 A. Or maybe the procedure wasn't, you know, fulfilled the  
18 way it was written out to be.

19 Q. Okay. And you mentioned a variety of things but in your  
20 letter, specifically just going by the litany of the letter,  
21 you talk about racist, sexist, transphobic and other overtly  
22 abusive comments from customers. Is that correct?

23 A. Is this the first email?

24 Q. I'm just asking you a question about -- were those the  
25 types of comments that you felt needed to be addressed by

1 Whole Foods?

2 A. Yes.

3 Q. Okay. And if you -- employees reported them to an ASTL,  
4 the ASTL would take action, correct?

5 A. Wanted action, right. That was the hope.

6 Q. And was the phrase BLM that you were wearing a stand in  
7 for all of that?

8 A. A prong that makes the whole. It's argument.

9 Q. So it's one little part. Is that your testimony or is  
10 it all within? I'm asking you.

11 A. Can you rephrase the question?

12 Q. When you were wearing the phrase, Black Lives Matter --

13 A. Right.

14 Q. -- were you wearing it to protest employees saying -- or  
15 customers saying racist, sexist, transphobic and overtly  
16 abusive language?

17 A. They are related, yeah. But that is not the only thing  
18 that was being protested by wearing BLM in the workplace.

19 Q. Okay.

20 A. A lot of it is job stagnation, you know, access to  
21 better shifts, et cetera, et cetera. You know, we had to  
22 call OSHA a bunch of times that summer. So safety.

23 Q. So wearing Black Lives Matter, was that protesting all  
24 of these things?

25 A. Black Lives Matter is a movement that lumps together a



1 lot of separate things, one of them being labor conditions.  
2 So when people at work are not protected from abusive  
3 customers, even if that person is white and trans, it is a  
4 prong of the movement in some capacity.

5 Q. So Black Lives Matter covers, in addition to -- does it  
6 cover -- is one of the prongs police brutality?

7 A. One of the prongs, yes.

8 Q. Okay. And one of the prongs is how housing, how housing  
9 works and things like that?

10 A. One of the prongs, yes.

11 Q. Mortgages?

12 A. Yeah.

13 Q. Healthcare. You mentioned healthcare before.

14 A. Yes.

15 Q. So it means all of these things?

16 A. It's a large group with many prongs, and it is about the  
17 systems in place in America that create inequity. It could  
18 be wealth and equity. That could be any inequity.

19 Q. And Black Lives Matter also includes customers saying  
20 transphobic things to trans team members?

21 A. I understand the point you're trying to make. If the  
22 customer is -- if the employee is black, I think it means  
23 more than if the trans, you know, cashier is white in the  
24 umbrella.

25 Q. Okay. All right.

1 A. I know -- I understand.

2 Q. The question -- I'm going to question so we haven't made  
3 it for the record. What is your race?

4 A. White. Yeah, white.

5 Q. Okay. That's fine. It's just not on the record. So I  
6 just wanted to make sure we got that on the record. Okay.

7 Now, at some point, you learned about the National Labor  
8 Relations Board.

9 A. I did.

10 Q. Okay. Is the first time you learned about the National  
11 Labor Relations Board June 29th when someone mentioned it in  
12 the chat or did you know about the Board from prior  
13 experience?

14 A. If that --

15 Q. And I'm not asking -- for the record, I'm not asking  
16 about prior charge filing experience or anything like that.  
17 I'm just asking about your awareness of the National Labor  
18 Relations Board.

19 A. I knew it existed. I didn't understand how it pertained  
20 to me in the moment. Whatever the first instance of the  
21 rhetoric, probably NLRB being positioned (ph.) to the  
22 Telegram, that's when I really started to focus.

23 Q. Okay. So at some point, a team member mentioned in the  
24 Telegram --

25 A. Um-hum.

1 Q. -- that employees -- if employees were wearing BLM pins,  
2 they should respond to management that they are engaging in  
3 labor activism and calling out racism within the workplace  
4 and showing solidarity with your coworkers to try to improve  
5 working conditions. Is that correct?

6 A. Absolutely.

7 Q. And the first time that showed up in the Telegram chat  
8 was June 29th, correct?

9 A. Um-hum. Yes. Whatever day it shows up, is the first  
10 day it showed up in the chat.

11 Q. And at that point, you had already been wearing the pin?

12 A. Yes, for shifts.

13 Q. Okay. And I believe your response to reading that was  
14 this is good. Does that sound right?

15 A. Yeah.

16 Q. Okay.

17 A. This is good.

18 Q. Now, you mentioned at some point that Travis or Scott  
19 told you that they were going to crack down on everyone  
20 wearing BLM pins. Do you recall that?

21 A. Um-hum.

22 JUDGE SOTOLONGO: Is that a yes by the way?

23 THE WITNESS: Yes.

24 JUDGE SOTOLONGO: Okay.

25 THE WITNESS: Sorry.

1 Q. BY MS. SCHAEFER: And you were informed that -- did you  
2 learn that in a chat or did Travis or Scott tell you that?

3 A. That was sent to me directly publicly on the rooftop.

4 Q. Okay.

5 A. Yeah.

6 Q. And in the chat, when you learned that the dress code  
7 was starting Monday would be strictly enforced, did you go  
8 back to the guidance about the NLRB and look at that?

9 A. I definitely looked back, yeah. I wanted to have  
10 information. I wanted to know what my rights were.

11 Q. Sure.

12 A. Just because we didn't have the language doesn't mean  
13 that's not what we were doing.

14 Q. And when you -- you informed everyone in the chat that  
15 when Lamin, Lamin, excuse me, seeks me out for conversation  
16 about the pins, I will tell him I'm wearing the pin in  
17 concert with labor rights and it's concerted protected  
18 activity, and I will file charges with the NLRB. That's my  
19 plan. You told everyone in the chat that, correct?

20 A. I told absolutely everyone in the chat exactly that.

21 Q. Okay.

22 A. If I were to be confronted about the pin.

23 Q. And you testified that when Jenny came up to you, that's  
24 what you said to Jenny, correct?

25 A. It is what I said, yes.

1 Q. And when Lamin came up to you, that's what you said to  
2 Lamin?

3 A. I said the same, and it was -- I was speaking primarily  
4 with Matt on that second day. Lamin was present.

5 Q. Understood.

6 A. Yeah.

7 Q. When you were talking about -- so you met Matt the first  
8 time, and then you went back and talked to Matt and Lamin the  
9 second time?

10 A. Correct.

11 Q. Okay. And when you switched -- you testified that you  
12 switched the Black Lives Matter pin to a necklace. Is that  
13 right?

14 A. Yes.

15 Q. Okay. And were you -- did you have any issues wearing  
16 the necklace that said BLM?

17 A. BLM, no. I was being a little, you know, I would tuck  
18 it in my shirt when people walked by. It was not like I was  
19 flaunting it around.

20 Q. The dress code permitted employees to wear jewelry,  
21 correct?

22 A. Nothing had been adjusted in my understanding at that  
23 point to say that jewelry couldn't be there.

24 Q. Nothing had been adjusted to say that --

25 A. That we couldn't wear jewelry at that point.

1 Q. So just to be clear, the dress code permitted you to  
2 wear a necklace?

3 A. So far as I know, at a certain period of time, yes.

4 Q. So you wore BLM on the necklace --

5 A. It said BLM not Black Lives Matter.

6 Q. And has anyone told you to take off the BLM necklace?

7 Did anyone ever tell you to take off the BLM necklace?

8 A. No, and I wouldn't imagine they would since I docketed  
9 my claim by the time I switched.

10 Q. Okay. I just have a couple of more questions. I'm just  
11 catching up to make sure that I --

12 A. Okay.

13 Q. -- have them all. Now, you testified that at the town  
14 hall, you had concerns that there was no forum for employees  
15 to raise issues.

16 A. I mean the town hall was a forum but previous to that,  
17 and in perpetuity, there's nothing really.

18 Q. All right. But there's never been anything from  
19 stopping -- to stop employees from talking to -- to stop team  
20 members from talking to the store team leader or an ASTL on  
21 the tip line if they have questions other than --

22 A. That experience.

23 Q. -- perceived imbalance of power?

24 A. I'll concede that, yeah.

25 Q. So there are forums for employees to raise concerns?

1 A. Right. There was a tip line but who's on the other end  
2 listening, yeah, right. There's someone in HR but is it  
3 really HR or is it payroll protection. So.

4 Q. Is it fair to say you were sending a lot of emails and  
5 some -- and many of the requests in the emails were met by  
6 Whole Foods?

7 MR. RITTERMAN: Objection. That's a lot. The three  
8 emails or are you talking about something else?

9 MS. SCHAEFER: Three emails. I did mean the three  
10 emails.

11 MR. RITTERMAN: Okay.

12 THE WITNESS: Two of them certainly. The termination of  
13 Joe Burton and having those town halls instead of one-on-ones  
14 with Joe Burton.

15 Q. BY MS. SCHAEFER: And there was -- now we talked about  
16 Morris House for a second. The concept of donating to Morris  
17 House was raised in I think letter three, yes?

18 A. Correct.

19 Q. And Morris House, you challenged Whole Foods to make a  
20 donation to Morris -- I'm sorry -- if it's House or Home, but  
21 you challenged Whole Foods to make a donation to match the  
22 donation that employees made to this home that serves trans  
23 members of the community.

24 A. Yeah, primarily black trans women.

25 Q. Morris House serves people of all races?

1 A. I would have to double check. It's been a while since I  
2 was up to date on their stuff, but I think it's primarily  
3 black and brown people.

4 Q. It's in south Philly.

5 A. I thought west.

6 Q. Oh, is it? Okay.

7 A. Yeah.

8 Q. And it's named after a trans person that was murdered at  
9 the hands of the police, correct?

10 A. I didn't know that.

11 Q. Okay.

12 A. So.

13 Q. In response to the challenge, did Whole Foods allow the  
14 employees to vote -- invite the employees to vote where Whole  
15 Foods would make a donation?

16 A. There was a voting process and a few organizations that  
17 were listed for donation.

18 Q. And so employees were voted and a donation was made  
19 based on where the employees voted to send the donation?

20 A. And I forget to where the money went.

21 Q. Okay. But that happened?

22 A. It did happen.

23 Q. When Joe Burton gave food and water to the police  
24 officers, did that change any of the tasks that you were  
25 assigned as a seafood team member?



1 MR. PETERSON: Objection. Relevance.

2 JUDGE SOTOLONGO: I missed the question. I was --

3 MS. SCHAEFER: That's okay.

4 MS. SCHAEFER: When Joe Burton gave the food and water  
5 to the police, did it change any of the assigned tasks of the  
6 members of the seafood department?

7 JUDGE SOTOLONGO: I don't see that as being relevant.  
8 Sustained.

9 MS. SCHAEFER: Is the General Counsel ready to concede  
10 that Joe Burton giving food and water to the police is not a  
11 term and condition of employment?

12 JUDGE SOTOLONGO: Well, what does that have to do with  
13 changing the work condition within the seafood department? I  
14 don't see the connection.

15 MS. SCHAEFER: Okay.

16 JUDGE SOTOLONGO: The question was --

17 MS. SCHAEFER: As long as --

18 JUDGE SOTOLONGO: -- giving food and water to the police  
19 affect the work conditions of the seafood department.

20 MS. SCHAEFER: I'm asking the witness because the  
21 witness works in the seafood department. I can ask the  
22 question broader, but I would probably be drawing an  
23 objection that the witness didn't know the answer.

24 JUDGE SOTOLONGO: It's another way of asking the  
25 question. Go ahead and give it a try.

1 Q. BY MS. SCHAEFER: Did Joe Burton giving food and water  
2 to the police change any of your assigned tasks at work every  
3 day?

4 A. My assigned --

5 MR. PETERSON: Same objection.

6 JUDGE SOTOLONGO: I'll allow it.

7 THE WITNESS: My assigned tasks, not that I remember.

8 Q. BY MS. SCHAEFER: Did it have any effect on your  
9 compensation?

10 A. Not that I'd be able to track down.

11 Q. Okay. And it didn't affect the hours that you were  
12 scheduled to work?

13 A. To be fair, I think they really skimped on raises in the  
14 beginning but, no, it didn't affect my job, role, tasks or my  
15 pay so far as I know or the hours.

16 MS. SCHAEFER: Your Honor, can I just have 5 minutes to  
17 confer with counsel and then --

18 JUDGE SOTOLONGO: All right. Let's take a 5 minute  
19 break. Off the record.

20 (Off the record from 4:23 p.m. to 4:32 p.m.)

21 JUDGE SOTOLONGO: Back on the record.

22 All right. Ms. Schaefer.

23 Q. BY MR. PETERSON: I may have missed it, but did you -- I  
24 asked you a question about when you had not worn Black Lives  
25 Matter paraphernalia to work. Did you wear Black Lives

1 Matter pins outside of work during this time period?

2 A. Certainly at least to the protests.

3 Q. Anywhere else?

4 A. I was very cognitively wearing it to work whereas  
5 outside of work, I don't really remember. I wasn't keeping  
6 track of it like that.

7 MS. SCHAEFER: No further questions, Your Honor.

8 JUDGE SOTOLONGO: All right. Mr. Peterson, any  
9 redirect?

10 MR. PETERSON: Thank you, Your Honor.

11 **REDIRECT EXAMINATION**

12 Q. BY MR. PETERSON: Do you have General Counsel's Exhibit  
13 50 in front of you?

14 A. Give me 1 second. Oh, yeah, 50. Yeah.

15 Q. I just wanted to clarify, you were asked about any  
16 changes in the demands that were reiterated between June 12th  
17 and June 15th. And I just wanted to point out on page 4, the  
18 fourth demand, detailed action plan towards annual (ph.)  
19 protections against verbally violent customers. I don't see  
20 that in the June 12th letter. Am I not seeing that or --

21 A. I believe that to be true.

22 Q. Yeah. I mean just take a look and confirm it.

23 A. That's how I understand it, that this was an additional  
24 demand.

25 Q. Okay. So demand four was an additional demand, that was

1 added to the June 12th email having -- now that you've looked  
2 at it. Do you see that?

3 A. Um-hum. Yes.

4 Q. Do you know how that demand came -- do you know how that  
5 demand was added and why that demand was added between June  
6 12th and June 15th?

7 A. Because it hadn't happened, but we hadn't articulated  
8 it. So.

9 Q. Was that one of the things you had been discussing in  
10 the Telegram chat?

11 A. Yes.

12 Q. All right. I don't need a lot of detail, but the -- you  
13 were testifying about employees being upset because Joe had  
14 not shrunk out -- gone through the shrink out process. Can  
15 you -- what exactly did he purportedly not follow?

16 MS. SCHAEFER: I thought we established that. You had  
17 objected on relevance grounds when I asked the question.

18 MR. PETERSON: I did, and I think it was overruled. So  
19 I'll wanted to follow up.

20 JUDGE SOTOLONGO: Well, this whole line is not very  
21 helpful.

22 MR. PETERSON: Fair enough. I will move on.

23 Q. BY MR. PETERSON: You testified about the dress code and  
24 your understanding that jewelry was permitted.

25 A. Yes.

1 Q. Do you recall that testimony that you were being asked  
2 about?

3 A. Yeah. If I put on a necklace because I thought I could  
4 at that juncture. So.

5 Q. Do you know if, do you know if that ever changed? Did  
6 the rules for jewelry ever change?

7 A. I think it was stripped back to a single wedding band,  
8 but that currently is not enforced. So I don't know the  
9 current gig.

10 MR. PETERSON: Okay. I have nothing further.

11 JUDGE SOTOLONGO: All right. Mr. Ritterman, any --

12 MR. RITTERMAN: Yes, please, Your Honor.

13 JUDGE SOTOLONGO: Go ahead.

14 MR. RITTERMAN: I'm just asking on cross.

15 **REDIRECT EXAMINATION**

16 Q. BY MR. RITTERMAN: So on cross, you were asked about the  
17 clientele of South Street on Whole Foods. Now, we're the  
18 only two people from Philly here. So can you please explain  
19 to the rest of the room and for the record, what's the --  
20 what is South Street mean in Philly? What kind of people are  
21 there? What sort of volume does it have?

22 A. South Street as a whole is a muscling (ph.)  
23 entertainment center. The Whole Foods on South Street is  
24 closer to Broad, and generally services, and this is a little  
25 speculative, but affluent white customers.

1 Q. Okay. And what sort of political sentiments are  
2 generally expressed on South Street?

3 A. Those that could be of the liberal ilk.

4 Q. Is it fair to say a lot of marijuana type stores,  
5 paraphernalia sort of thing on South Street?

6 MS. SCHAEFER: Objection. Relevance.

7 JUDGE SOTOLONGO: It is kind of straying to areas that  
8 are really not relevant.

9 MR. RITTERMAN: Okay. I'll move on.

10 Q. BY MR. RITTERMAN: You were asked about the store taking  
11 no position on racism versus being anti-racism. If issues of  
12 racism is put to someone, and they say I take no position on  
13 racism, is that neutral or is it taking a position?

14 A. It is in itself taking a position in my estimation.

15 Q. And what position is that?

16 A. It's not anti-racism. I can tell you that.

17 Q. And --

18 MS. SCHAEFER: Objection, Your Honor. Non-responsive.

19 JUDGE SOTOLONGO: Overruled.

20 Q. BY MR. RITTERMAN: So you were asked about procedures in  
21 place to talk to management. Now, management at the time,  
22 the person at the top of your store was Joe Burton, right?

23 A. Correct.

24 Q. How comfortable would you have felt talking to Joe  
25 Burton about issues of racism and transphobia in the store?

1 A. Zero percent.

2 Q. And why is that?

3 A. He pitched himself as an unsafe person through multiple  
4 misconducts.

5 Q. And is it fair to say other managers in that store had  
6 to report to Joe Burton as he's at the top, right?

7 A. That's correct.

8 Q. Now, I want to ask you about R-52. It says, the second  
9 sentence, these protests were part of the international  
10 uprising against white supremacy and police terror. So is it  
11 limited just to police terror or other forms of white  
12 supremacy?

13 A. All forms of white supremacy.

14 Q. And to what extent, if any, were there concerns about  
15 white supremacy in Whole Foods?

16 A. Very much so.

17 Q. Tell us about that.

18 A. The management, so the hierarchy, the way that Joe's  
19 behaviors had created a culture of fear for black employees  
20 to say so. Also black employees not being able to move up or  
21 at least not being offered positions in the -- with the  
22 regularity that --

23 MS. SCHAEFER: Your Honor, I'm going to object to the  
24 witness speaking on behalf of black employees at South Street  
25 and articulating their concerns.

1 Q. BY MR. RITTERMAN: Were black employees' concerns your  
2 concerns?

3 A. Yes.

4 Q. Okay.

5 MR. RITTERMAN: Your Honor, may client please finish the  
6 answer.

7 JUDGE SOTOLONGO: Well, here's the thing. Here's the  
8 thing, is that the witness can tell us if, you know, if he in  
9 conjunction with other employees has approached management  
10 and contested, you know, in which he performed treatment of,  
11 you know, black workers in the store. He can certainly  
12 address that. He can't speak for, you know, black workers  
13 generally or for, you know, or for other words, unless he was  
14 part of a group of employees that most certainly because if  
15 were no part of -- if he -- he's just relaying what he was  
16 told, basically we're going to have a problem with hearsay.  
17 And so he can tell us what he meant by the wording of  
18 Respondent's 52 since he was the author. Were you not?

19 THE WITNESS: I need to find R-52.

20 JUDGE SOTOLONGO: This one.

21 THE WITNESS: The green one?

22 JUDGE SOTOLONGO: No, this one.

23 THE WITNESS: I was not the author of this.

24 JUDGE SOTOLONGO: You were not the author of this.

25 Okay. You gave your approval.



1 THE WITNESS: Yes, I was a democratic effort to say that  
2 I'm unilaterally adverse.

3 JUDGE SOTOLONGO: Okay. So inasmuch as you weren't the  
4 author of this, the approval that, you know, whoever wrote  
5 this can tell us what or he she meant or, you know, whatever  
6 the gender of this person is. Otherwise, we're just talking  
7 in vague generalities, and it isn't going to be helpful to  
8 the record.

9 Q. BY MR. RITTERMAN: And these are concerns, the ones you  
10 were just expressing before, that you brought up when  
11 confronted about your pin by management, right?

12 A. Yes.

13 Q. Do you see there being any intersection between black  
14 and transgender rights or not or somewhere in between?

15 A. There's certainly an intersection, yes.

16 Q. And what is that?

17 A. Equity.

18 Q. And how about police brutality and labor? No  
19 connection, some connection, a lot of connection.

20 A. A lot of connection.

21 Q. And how so?

22 A. There's prongs that make up society when there's  
23 systematically racism. They're inherently and inextricably  
24 related.

25 Q. And the Whole Foods issues, you discussed, part of that

1 systemic racism, not at all, some --

2 MS. SCHAEFER: Objection. Is that an actual question or  
3 are we just asking --

4 JUDGE SOTOLONGO: I'll allow it.

5 MR. RITTERMAN: That will be my last question.

6 THE WITNESS: They're very related.

7 MR. RITTERMAN: Thank you, Your Honor. That's --

8 JUDGE SOTOLONGO: Ms. Schaefer.

9 MS. SCHAEFER: No questions, Your Honor.

10 JUDGE SOTOLONGO: All right. As I mentioned before, at  
11 one of our breaks, please do not discuss your testimony.  
12 You're excused as a witness but do not discuss your testimony  
13 with any other witness or potential witness in this matter  
14 until this case is over, all right.

15 THE WITNESS: Okay.

16 JUDGE SOTOLONGO: Thank you very much.

17 THE WITNESS: Thank you.

18 **(Witness excused.)**

19 MR. PETERSON: I'll grab the next witness.

20 JUDGE SOTOLONGO: Yes.

21 **(Pause.)**

22 JUDGE SOTOLONGO: All right. Let's go back on the  
23 record.

24 General Counsel, will you call your next witness.

25 MR. PETERSON: Thank you, Your Honor. General Counsel

1 calls Truman Read.

2 JUDGE SOTOLONGO: Mr. Read, please take the witness  
3 stand. You don't have to wear your mask while you're  
4 testifying by the way.

5 MR. READ: Good.

6 JUDGE SOTOLONGO: Let me swear you in. Will you please  
7 raise your right hand?

8 (Whereupon,

9 **TRUMAN READ**

10 was called as a witness by and on behalf of the General  
11 Counsel and, after having been first duly sworn, was examined  
12 and testified as follows:)

13 JUDGE SOTOLONGO: Thank you. Please take a chair, and  
14 please spell your name for us and give us your address.

15 THE WITNESS: Great. First name Truman, T-r-u-m-a-n,  
16 last name Read, R-e-a-d. My address --

17 JUDGE SOTOLONGO: R --

18 THE WITNESS: R-e-a-d.

19 JUDGE SOTOLONGO: A, okay.

20 THE WITNESS: The address is 4826 Region Street,  
21 Philadelphia, PA 19143.

22 JUDGE SOTOLONGO: Please proceed, Mr. Peterson.

23 MR. PETERSON: Your Honor, just one quick procedural  
24 matter if I may. May I have the affidavit back?

25 MS. SCHAEFER: I have to find it.

1 MR. PETERSON: Sure.

2 MS. SCHAEFER: Yes.

3 **DIRECT EXAMINATION**

4 Q. BY MR. PETERSON: Good afternoon.

5 A. Good afternoon.

6 Q. I'll start by asking you if you have preferred pronouns,  
7 your title?

8 A. He, him is good.

9 Q. Mr. Read, is that okay?

10 A. Yes.

11 Q. All right. Mr. Read, you know I'm Matt Peterson, the  
12 attorney for the National Labor Relations Board. We're going  
13 to be asking you some questions today. I want you to listen  
14 carefully, answer truthfully. If you don't understand a  
15 question or it's unclear, let us know and we can clarify it  
16 for you. Keep in mind that this is being recorded. So head  
17 nods and gestures don't get recorded. So articulate your  
18 yeses and noes and uh-uhs and uh-huhs and try and let the --  
19 try to make sure the attorney's finished asking the question  
20 before you give a response because sometimes there's an  
21 inclination to kind of talk over each other. So just be a  
22 little patient if you don't mind.

23 A. Understood.

24 Q. Okay. Are you familiar with a Company called Whole  
25 Foods?

1 A. Yes.

2 Q. Okay. How are you familiar with Whole Foods?

3 A. Both as a customer and as a former employee.

4 Q. Over what time period did you work at Whole Foods?

5 A. From February 2019 to early September, mid September  
6 2021.

7 Q. And which -- did you work in a particular Whole Foods'  
8 location?

9 A. Yes, the Whole Foods on South Street. The South Street  
10 location.

11 Q. And did you hold more than one position while you were  
12 working at this Whole Foods store?

13 A. According to my hiring paperwork, my title never  
14 changed, but I did have three different positions while I was  
15 there.

16 Q. And first of all, tell us what your title was and then  
17 you can describe how your --

18 A. I believe the term on the hiring paperwork was  
19 sanitation team member which had me working -- other than  
20 that paperwork, that term is never used. I was considered a  
21 maintenance team member which is essentially a custodian,  
22 cleaning the public and private spaces of the store, making  
23 sure all the trashcans are always empty, you know, I could go  
24 into detail, lots of routines. Especially during COVID, you  
25 know, there was lots of hourly routines. So making sure you

1 cleaned certain areas on an hourly schedule. So I was a  
2 maintenance team member first for some time. I was in the  
3 grocery department, although my title never changed, and  
4 that's, you know, stocking shelves, organizing product in the  
5 back of the house. And then for my last year or so, I was a  
6 CA, which is cashier's assistant, making sure cashiers have  
7 all the materials they need, that they, you know, emptying  
8 their trashcans, stocking paper bags, and keeping the carts  
9 stocked which is actually a very full-time job due to the  
10 architecture of the store, a lot of running up to the parking  
11 lot, loading carts onto the elevators, getting them back down  
12 to the store. When we were busy, that would keep me very  
13 busy staying on top of the carts.

14 Q. Okay. And most of these questions are going to focus on  
15 the summer of 2020.

16 A. Um-hum.

17 Q. Which position were you working in the summer of 2020?

18 A. Most of the time as a CA, cashier's assistant.

19 Q. Did you have a regular work schedule during the summer  
20 of 2020?

21 A. Yes. Usually I'd work 4 weeknights, from 7 p.m. to 11  
22 p.m. and 1 weekend day, usually 10:30 to -- I'm sorry --  
23 usually 2:30 to 10:30. So usually I worked 24 hours.  
24 Sometimes it would be as much as 28. Always between 20 and  
25 28 but generally 4 weeknights, 1 weekend shift.

1 Q. Okay. That 24 to 28, that's hours per week?

2 A. Correct.

3 Q. Okay. And who did you report to in the summer of 2020?

4 A. My team leader was Valerie Johnson. So she would be the  
5 person I reported to directly.

6 Q. And do you recall who -- were there any other managers  
7 above her that you recall?

8 A. Yeah, specifically at that time?

9 Q. Yes, yes, summer of 2020.

10 A. So summer of 2020, yeah, Valerie was my team leader. My  
11 assistant team leaders were Andrew, Andrew Pressman I believe  
12 and Abby, I'm not sure of her last name. So they were my  
13 assistant team leaders. Then store team leader, Joe was on  
14 leave at some point in the summer.

15 Q. Is that Joe Burton?

16 A. Correct.

17 Q. Okay.

18 A. And then assistant or associate store team leaders were  
19 Matt, I'm not always familiar with their last names. We were  
20 on a first name basis, but Matt, Jaime and a woman whose name  
21 has escaped me. She was around less, sort of criticism of  
22 her at the time. She was always in her office. I believe  
23 Tara was gone by that time. So you had -- mostly it was Matt  
24 and Jaime, and then, of course, there were the interim store  
25 team leaders that came in, Lamin, Shana, another woman who I

1 never got to meet who was from a Pittsburgh store.

2 Q. Did you -- have you -- are you familiar with the phrase,  
3 Black Lives Matter?

4 A. Yes.

5 Q. Have you ever worn the phrase, Black Lives Matter, at  
6 work while you were working at Whole Foods?

7 A. Yes.

8 Q. About how often?

9 A. I would think at least two dozen times. You know, the  
10 exact dates are fuzzy, but sometime in June, I started  
11 wearing Black Lives Matter adornments and that lasted --

12 JUDGE SOTOLONGO: You wore Black Lives Matter what?

13 THE WITNESS: Adornments I said because it sometimes was  
14 a pin and sometimes was a necklace.

15 JUDGE SOTOLONGO: Okay. Adornments, okay. So it was a  
16 necklace or a pin.

17 THE WITNESS: Yeah, those were the only two I wore.

18 JUDGE SOTOLONGO: Okay. Exactly where did you wear the  
19 pin?

20 THE WITNESS: So we wear an apron as part of uniform,  
21 and usually I would pin it to my apron around the like left  
22 breast pocket area, around here on my chest.

23 JUDGE SOTOLONGO: And did you have the necklace outside  
24 the apron or was it inside? In other words, was it visible?

25 THE WITNESS: It was visible, yeah.



1 JUDGE SOTOLONGO: So you were wearing the necklace  
2 outside of your --

3 THE WITNESS: Correct.

4 JUDGE SOTOLONGO: Okay.

5 THE WITNESS: The exact number of times I'm not sure,  
6 but there was somewhere between 2 weeks to a month where I  
7 was wearing it.

8 MR. PETERSON: Permission to approach the witness, Your  
9 Honor.

10 JUDGE SOTOLONGO: Okay.

11 **(General Counsel's Exhibit 49 marked for identification.)**

12 Q. BY MR. PETERSON: I'll give you a chance to look at  
13 General Counsel's Exhibit 49, and let me know if you've seen  
14 that before?

15 A. Yes.

16 Q. And where have you seen this before?

17 A. So that's what had been a pin that I wore that was at  
18 that point turned into a necklace. So I took that picture  
19 and I see many typos. So I'm a little embarrassed to say I  
20 wrote that but, yeah, that's -- I believe all this I posted  
21 to Telegram. That's a picture I took of myself.

22 Q. And we heard some testimony about it, but what is  
23 Telegram? What are you referring to?

24 A. A messaging app. I don't know too much about it, but  
25 other than, you know, there was -- when I was interested in

1 getting more involved in some of the organizing that was  
2 happening at the store, I became aware of a group of people  
3 communicating through Telegram. So I downloaded the app and  
4 it's the only time I've ever used the app was basically  
5 around the summer of 2020.

6 Q. And the button that's depicted on that -- in that  
7 photograph, is that -- can you tell us what that is and, you  
8 know, is this the -- did this button always come in the  
9 necklace form?

10 A. No, at first it was a pin, you know, a standard sort of  
11 like a safety pin mechanism in the back like most, you know,  
12 pins have. And I wore it that way until I was told that I  
13 was not allowed to wear that in the store any more. And at  
14 the time that that happened, I was aware that other team  
15 members had been able to wear necklaces. So I was ready to  
16 then -- I had a string with me ready to put it on as a  
17 necklace. I believe this picture -- by the time this picture  
18 was taken, I had taken the safety pin mechanism off the back  
19 and just somehow put a wire into the back so that I could run  
20 the string through it, so it could no longer be worn as a  
21 pin, but only as a necklace.

22 Q. Okay. We'll kind of get into some of the -- some of  
23 your testimony in a bit, but just focusing on the appearance  
24 of the pin and the necklace, apart from wearing this as a pin  
25 and necklace, the Black Lives Matter button that's on GC-49,

1 did you wear other Black Lives Matter or its acronym, BLM  
2 messaging at work?

3 A. So at first I guess I wore three iterations. First, it  
4 was the Black Lives Matter pin which was this white one,  
5 about a 2 inch diameter. Then I wore that as a necklace, and  
6 then later on, I wore a necklace that I made that just said  
7 the letters, BLM. At that point we had been told that  
8 perhaps the letters BLM would be permitted, though the  
9 phrase, Black Lives Matter, certainly would not. So at a  
10 certain point, yeah. I made a necklace that just said the  
11 letters BLM. It was on a piece of plastic that was about 2  
12 inches long, 1 inch wide, 1/8 inch to a quarter inch thick.  
13 I sort of screwed a little eyelet screw, like the top that  
14 goes in the back of a picture frame, with the wire between,  
15 screw that into, put a string through it and did my best to  
16 paint it and make it look nice. I am an artist, but it was  
17 not a great looking necklace, but it served the purpose.

18 Q. Okay. So now we've kind of peeled that back and worked  
19 through the timeline, the sequence of your, of your Black  
20 Lives Matter adornments, what -- do you recall the first time  
21 you wore one of those items you described?

22 A. Yeah. Not the first date exactly, but it was as quickly  
23 as I could get something following when I first heard about  
24 two team members either being sent home or being told they  
25 had to take off Black Lives Matter masks at this point. The

1 first thing I wanted to do was find a Black Lives Matter mask  
2 in solidarity. I wore one. It took a few weeks to get in.  
3 And in the meantime, I saw team members with Black Lives  
4 Matter pins. So this would have been, you know, a few days  
5 after Alexis had been sent home and I found out that Chris, a  
6 fellow maintenance worker, was told to take off a mask. And  
7 I -- yes, so as quickly as possible, in a few days, I got the  
8 pin. The ones the team members were wearing, Kayleb I  
9 believe had been distributing those, and they were out of  
10 those pins. They told me they'd get me one. In the  
11 meantime, I was able to buy one at a park near where I live  
12 out in west Philly, the Malcolm X Park. A local vendor was  
13 selling them. So I wore one to the store as quickly as I  
14 could which was a few days after I heard about Alexis and  
15 Chris, sometime in June.

16 Q. And Alexis and Chris, are those team members at the  
17 store?

18 A. Yes.

19 Q. And how did you hear that they had been sent home?

20 A. In person. I wasn't on any social media at the time.  
21 Eventually I got on Telegram but coming into the store one  
22 day, I think it happened back to back where I heard about  
23 Alexis being sent home, and then, you know, possibly it was  
24 on 2 different days, but I heard about Alexis being sent home  
25 in person, and I have a more clear memory of coming into the

1 store, hearing about Chris being told to take off a mask.  
2 That happened very recently. Chris was still in the store.  
3 I was to the back of the house, you know, it's where I was  
4 going to clock in and get ready for my shift, and Chris was  
5 there still working their shift, very upset. They weren't  
6 wearing a mask at the time. They were debating if they were  
7 going to put it back on and I had a conversation with Chris  
8 about it at that time, you know. So I had heard about it  
9 from other people but I got to talk to Chris directly about  
10 it, you know, I think within an hour or so of her first being  
11 told to take the mask off.

12 Q. Okay. So, yeah, I'm trying to get a timeline. Had you  
13 seen other employees wearing Black Lives Matter pins prior to  
14 the first day that you wore the pin?

15 A. Prior to the first day that I wore a pin, yes. I don't  
16 know that I had noticed it before Chris was told to take  
17 their mask off, but that was when I started to be very  
18 interested in doing something in solidarity of Chris. Soon  
19 after that, I started to see other team members wearing pins.  
20 I don't believe I saw it before that.

21 Q. Okay. And what was your purpose in wearing the Black  
22 Lives Matter pin?

23 A. It was to show -- to work in solidarity with my team  
24 members. And, yeah, as soon as I talked to Chris, I  
25 immediately again was very interested in getting my own mask.

1 I made that clear to Chris like, yeah, if you want to keep it  
2 on, I support that. I'm going to get one. I'll support  
3 that. The conversation quickly changed to pins instead of  
4 masks but -- sorry -- did I answer the question?

5 Q. I think so.

6 A. I got distracted.

7 Q. And did you object to -- upon learning that these  
8 coworkers had been sent home for wearing the Black Lives  
9 Matter masks? Did you object to or did you find that -- did  
10 you have a problem with that?

11 A. Yeah, I had a big problem with it. It was clear to  
12 me -- well, because the reason we were given was that it was  
13 a violation of the uniform policy. And that was alarming  
14 because the uniform policy had never been strictly enforced.  
15 I was pretty aware of the uniform policy, and was very aware  
16 that, you know, you can go around the store on any given day  
17 and find literally dozens of violations that were going  
18 unchecked. So that this was the first thing that Whole Foods  
19 seemed to be really paying close attention to, aside from,  
20 I'll give them credit, you know, shorts were a violation.  
21 That would be enforced, improper footwear might be enforced.

22 Those were the only two things, and that was well known  
23 like, if you're not wearing shorts basically, you can wear  
24 what you want. And this was the first thing that they were  
25 cracking down on, and that was very alarming, you know. My

1 team members were very upset about it. So, yeah, it very  
2 quickly was -- like in my first conversation with Chris  
3 where, you know, this is a team member of mine, black woman,  
4 very upset that she's been told to take her Black Lives  
5 Matter mask off.

6 Very quickly within that conversation, we started  
7 talking about now we're looking at you, Whole Foods, because  
8 if you think that you don't have issues with systemic racism  
9 present within Whole Foods, you're kidding yourselves. So  
10 now, that quickly, we're looking at you, and we all want to  
11 make a statement about this.

12 Q. And these are conversations that you had with Chris?

13 A. With Chris, and then with dozens of other team members,  
14 yes, but Chris. That was -- the first conversation I had was  
15 with Chris.

16 Q. Okay. And then so you -- were you able to -- did you  
17 try to get one of the buttons or pins that other people were  
18 wearing?

19 A. I did, yeah. As soon as I saw that, I'm not sure how I  
20 found out, but pretty quickly found out that Kayleb was  
21 distributing some, reached out as quickly as I could trying  
22 to get, trying to get, you know, the same pin that other  
23 people were wearing. At the time, they were all out of them.  
24 They did say that they were ordering more and, you know, I  
25 was -- rather than waiting for that though, I ended up

1 getting my own.

2 Q. There was earlier testimony about a protest at Whole  
3 Foods on June 21st. Were you -- did you attend that protest?  
4 Are you aware of that protest?

5 A. I did not attend it. I definitely became aware of it.  
6 I'm not sure if I was aware of it before it happened or not.  
7 I became aware of it after I think.

8 Q. Do you remember if you had obtained the pin that you  
9 started wearing before or after the protest?

10 A. Before June 21st? I could not say with certainty it was  
11 before or after that.

12 Q. And once you started wearing the pin, did you wear it  
13 every day at work once you started wearing it?

14 A. Yes. Certainly for the most part. It is hard to  
15 remember exactly all the iterations of -- there was a lot of  
16 gray area in shifting policies and, you know. So we would  
17 get messaging trickle down, hey, if you wear a pin tomorrow,  
18 they're going to crack down and you're going to be sent home.  
19 So there were definitely different times. There was like  
20 first, maybe if the pin's not on your apron, but it's on your  
21 hat, like that seems to be okay, or you know, then there was  
22 a time where --

23 Q. I'm sorry to interrupt you. So --

24 A. So I don't -- there may have been a day or 2 where I  
25 didn't wear it because at some point the theory was, you



1 know, you're going to definitely get a corrective action.  
2 But I think that I did wear it every shift until eventually  
3 we all stopped wearing them.

4 Q. And so -- I'm trying to get -- kind of walk through the  
5 sequence in the progression. Was the first thing you wore  
6 the pin in pin form?

7 A. Yeah, the first thing I wore was the pin in pin form on  
8 my apron pretty close to where my nametag would be, right  
9 around, you know, the left breast pocket area.

10 Q. Did anyone from Whole Foods management ever say anything  
11 to you about wearing the pin?

12 A. Not at first. There was definitely a period of time  
13 where -- there was sometimes where it seemed like it was  
14 okay, and then there was time that it felt confrontational to  
15 wear it but we knew that we could get away with it. And then  
16 eventually, eventually management did speak to me about it.

17 Q. And so I guess -- yeah, so I guess we'll focus on the  
18 management --

19 A. Okay.

20 Q. -- the conversation with the management. I guess you've  
21 talked about a lot of things happening and impressions that  
22 you've had. I guess where are you getting those impressions  
23 from?

24 JUDGE SOTOLONGO: Well, yeah, that's not helpful. First  
25 of all, impressions aren't really relevant. What he was told

1 by managers and in some instances perhaps fellows employees  
2 but impressions, I don't see how they're really --

3 MR. PETERSON: Yeah. I'll try to --

4 JUDGE SOTOLONGO: -- aren't relevant.

5 Q. BY MR. PETERSON: So I would just like focus -- so my  
6 question was, you know, management, you know, did you, you  
7 know, what is the first conversation you recall with having  
8 somebody from maintenance in relation to when you started  
9 wearing Black Lives Matter messaging?

10 A. The first one would have been an email that I was  
11 surprised I couldn't find during the subpoena. I really did  
12 try to find it. At some point, I emailed Valerie Johnson, my  
13 team leader, the front end team leader, for clarification  
14 because there was a lot of different impressions on what  
15 would be allowed, and I asked for clarification if we could  
16 wear anything Black Lives Matter. And Valerie was not able  
17 to give me a straight answer. I mean --

18 JUDGE SOTOLONGO: You wrote her an email asking a  
19 question and then she responded. Is that --

20 THE WITNESS: Correct. Whether she responded in person  
21 or in email I can't --

22 JUDGE SOTOLONGO: Was this email sent to her Whole  
23 Foods' email account?

24 THE WITNESS: It would have been sent to a Whole Foods'  
25 email account. I may have sent it from my personal email. I

1 may have sent it from my Whole Foods email. If it was from  
2 my Whole Foods email, that's why I couldn't find it because I  
3 don't have access to it any more, but I definitely sent  
4 Valerie Johnson an email asking for clarification.

5 JUDGE SOTOLONGO: Okay. And Ms. Johnson responded to  
6 you and said what?

7 THE WITNESS: That she could not give me a clear answer  
8 on that. Essentially she didn't know the answer either.

9 JUDGE SOTOLONGO: And what you had asked her was if I  
10 could wear a Black Lives Matter pin? What exactly was your  
11 question?

12 THE WITNESS: It was definitely about wearing anything  
13 related to Black Lives Matter. I don't know if I  
14 specifically asked if I could wear a pin or whether I said  
15 can I wear anything Black Lives Matter.

16 JUDGE SOTOLONGO: Okay. And she gave -- she didn't give  
17 you a straight answer?

18 THE WITNESS: Well, then she tried to skirt around it.  
19 She admitted I don't have the answer.

20 JUDGE SOTOLONGO: Okay. Okay. All right. So what  
21 happened next?

22 THE WITNESS: The next conversation about it with  
23 management that I'm certain happened, because there may have  
24 been other passing ones that were sort of -- but I'm not  
25 positive, but definitely interim store team leader or interim

1     -- I'm not sure. I think they were interim store team  
2 leader rather than interim assistant store team leaders but  
3 with Lamin, Lamin Humma, and Shana, I'm not -- is it Shana  
4 Johnson. I'm not positive. Shana who eventually became the  
5 store team leader, spoke to me. Lamin did all the talking,  
6 but told me that --

7     Q.   BY MR. PETERSON: Just before you get started. Where  
8 did this conversation take place and who was present?

9     A.   This took place right near the -- what they call the  
10 booth which is basically where the -- either Valerie Johnson  
11 or assistant front end team leaders, or even below them,  
12 people we call shiftees, you know, all the managers of the  
13 front end, which is where all the cashiers, where they sort  
14 of hang out. Also basically the customer service booth.  
15 It's more simple. It was right beside the customer service  
16 booth.

17         JUDGE SOTOLONGO: Okay. And do you have the  
18 approximately date of that conversation?

19         THE WITNESS: Yeah. I believe it was July 8th.

20         JUDGE SOTOLONGO: Okay. Now tell us what these persons  
21 said to you and what you said to them?

22         THE WITNESS: I believe it was July 8th.

23         JUDGE SOTOLONGO: Okay. Now, tell us what these persons  
24 said to you and what you said to them?

25         THE WITNESS: So Lamin did all the talking. Shana was

1 present. Other than introducing herself, she said nothing.

2 JUDGE SOTOLONGO: Okay.

3 THE WITNESS: This was almost 2 years ago. Basically  
4 Lamin told me that, you know, it's against the uniform  
5 policy. I'm going to have to ask you to remove the pin. And  
6 then we had about five back and forths where I left Lamin  
7 know it was very disappointing. It's very upsetting,  
8 explained the reasons I'm wearing the pin.

9 Q. BY MR. PETERSON: Can you tell us what those reasons  
10 were that you expressed?

11 A. Absolutely. That when team members of mine were told to  
12 take off their masks and that was the first thing that I've  
13 seen Whole Foods enforce, it was alarming and upsetting and  
14 really started me looking into racism at Whole Foods. So I  
15 know -- I didn't use those exact words obviously. I wasn't  
16 as concise, but trying to tell them, you know, racism is an  
17 issue here, too. Because Lamin had said to me at one point,  
18 I support, you know, Lamin is a black man, saying I  
19 support -- I respect what you're doing. I appreciate you  
20 being a part of this fight. It's my fight obviously. But  
21 when I come to Whole Foods, I take it off.

22 And my point was, well, we can't take it off at Whole  
23 Foods because the issues exist here as well. And that's why  
24 we're wearing this. And he said I respect it. I appreciate  
25 you. It's against the uniform policy. You've got to take it

1 off. And, you know, in so many words, we went back and forth  
2 that way four or five times, never getting heated, never  
3 raising voices, just as many ways as I could trying to  
4 reiterate how frustrating it was. And so at that point, at  
5 the end of that conversation, is when I took it off and put  
6 it on as a necklace. It had been my understanding through  
7 talking to other team members through Telegram, we figured  
8 necklaces were allowed within the gig.

9 JUDGE SOTOLONGO: The dress code.

10 THE WITNESS: Exactly. We thought it was a loophole in  
11 the dress code.

12 JUDGE SOTOLONGO: Again, but you didn't make a necklace  
13 right away. You went home and changed it. Took it off and  
14 then a day or 2 later, you came back with a necklace?

15 THE WITNESS: So I had the red string with me ready to  
16 go.

17 JUDGE SOTOLONGO: Oh.

18 THE WITNESS: So I at first just, you know, like the  
19 safety pin thing, put that through the string and wore it  
20 that way. I believe that night I took the safety pin off and  
21 put a wire in so it could not function as a pin any more.

22 JUDGE SOTOLONGO: Okay.

23 Q. BY MR. PETERSON: And, you know, going back to your  
24 conversation with Lamin, do you recall any other -- any  
25 specific instances of or examples of racism that you brought

1 up with him?

2 A. That I brought up in that conversation, I can't say for  
3 sure. Again, I know I tried to get in as many as I could. I  
4 know examples of racism that I'm aware of in this moment, but  
5 I don't know exactly which ones I said to Lamin right then.  
6 I know I did my best to make it clear that racism is an issue  
7 within Whole Foods. And again, not -- I never tried to  
8 portray it as Whole Foods being more racist than other  
9 institutions, but just simply that just as many institutions  
10 could work harder at rooting out systemic racism. Whole  
11 Foods also needs to do that work. At no point was my  
12 argument like, ah, you go Acme, everything's great. We have  
13 a problem here. No, systemic racism does exist within Whole  
14 Foods and you're trying to tell us that you walk in here and  
15 it's gone, and that's, you know, it just clearly not true.  
16 So, yeah, like I said, we went back and forth about that, you  
17 know, like four or five times, each time him just coming back  
18 to I dare you but it's against the uniform policy.

19 Q. And so when you -- and you were wearing it. So at that  
20 time, you were wearing the white Black Lives Matter pin  
21 that's on General Counsel's 49?

22 A. Yes.

23 Q. As a pin?

24 A. As a pin, yes, at that time.

25 Q. And then did you convert it to a necklace in front of

1 Lamin?

2 A. No, I believe I walked away from them, was going about  
3 my shift, and I was back in the vestibule area which is just,  
4 you know, 10 feet from where we were speaking, and I put the  
5 red string on and put it around my neck right then. I don't  
6 think I did it right in front of them.

7 Q. Did you take off the button or the pin when -- after  
8 Lamin -- after your conversation with Lamin or did you take  
9 it off in front of Lamin?

10 A. I'm not positive. I'm sure that, you know, I was at all  
11 points respectful to Lamin, and if I did step away I  
12 physically taken it off, I believe he was confident that I  
13 was going to take it off. I think that I had at least like  
14 taken a few steps away before I started unbuttoning it,  
15 unpinning it. So, yeah.

16 Q. And what -- and did you wear a Black Lives Matter  
17 messaging on your next shift?

18 A. Yeah, the next shift I believe was the next day, and I  
19 was at that point wearing it as a necklace, probably just as  
20 shown in this photograph.

21 Q. Okay. That next day, did you have any discussions with  
22 any representatives of Whole Foods management about the now  
23 necklace?

24 A. Yes. The next day, Lamin came to me at some point in my  
25 shift. At the time I was in the vestibule probably, you



1 know, organizing carts or maybe putting baskets back in  
2 stacks near the doors. And, Lamin approached me and said  
3 that he was pretty sure the necklaces weren't going to be  
4 okay either. He was talking to management above him and  
5 thought maybe there could be a compromise where the letters  
6 BLM could be accepted. But the words, Black Lives Matter,  
7 would not be in any form, necklace or pin. And I reiterated  
8 my disappointment, tried to tell them again, there's issues  
9 in this store. I think by that point I had been told that  
10 Lamin himself had filed an anti-discrimination lawsuit  
11 against Whole Foods as he --

12 MR. FERRELL: Objection. Relevance. Move to strike the  
13 last --

14 JUDGE SOTOLONGO: Okay. Well -- okay. Just limit  
15 yourself to answering the question. You're sort of taking  
16 off and giving us a narrative, and take it from me, it drives  
17 attorneys crazy. So if you're asked what time of the day was  
18 it when you did something, don't say it was 10 a.m. and then  
19 I told, so forth and then I did this and then I did that.  
20 Just say it was at 10 a.m. and that's the answer to the  
21 question. Let your attorney ask the next question. I'm sure  
22 he'll draw out whatever needs to be. So, anyway.

23 THE WITNESS: I understand.

24 JUDGE SOTOLONGO: Please proceed.

25 THE WITNESS: Could you reiterate the question, sir.

1 Q. BY MS. SCHAEFER: Yeah. So I was asking about your  
2 conversation with Lamin and this was the day after July 8th.

3 A. Yes, it was the next day. I believe it was July 9th.  
4 That's when, yeah, Lamin told me Black Lives Matter spelled  
5 out in full words, not permitted in any form. Perhaps the  
6 compromise with the letter, BLM, could be permitted. And so,  
7 yeah. And again, I'm sure at that point, I don't remember  
8 the exact words I used but I was really trying to remind him  
9 that there's issues at this store as well. And that I'm not  
10 sure if I can make that compromise. I think at first I was  
11 like, you know, and I --

12 JUDGE SOTOLONGO: You've answered his question.

13 THE WITNESS: Sorry.

14 JUDGE SOTOLONGO: You're proceeding to something else  
15 now that is not answering the question.

16 THE WITNESS: Oh, I'm sorry.

17 Q. BY MR. PETERSON: You were trying to --

18 A. I think in that conversation I did say like I appreciate  
19 you trying to make a compromise, you know. And I genuinely  
20 did, you know, because that's -- I appreciated him trying to  
21 make a compromise, and I did express that to him is what I  
22 meant to say. I apologize if I'm going off target. And that  
23 is how that conversation ended basically.

24 Q. Did he tell you to remove the necklace at that time?

25 A. He did not tell me to remove it at that time. He did

1 not tell me to remove it at that time. He did tell me it  
2 wasn't going to be permitted, but he did not directly tell me  
3 to take it off, and I didn't.

4 Q. And so did you continue wearing the necklace as it  
5 appears on General Counsel's 49 after that conversation with  
6 Lamin?

7 A. I did.

8 Q. And then did you ever -- did you have any further  
9 discussions with management about wearing Black Lives Matter  
10 or BLM as a pin or other adornment?

11 A. Later that day, I had a quick conversation with Lamin  
12 again where I let Lamin know that the more I think about it,  
13 I don't know if I can make that compromise, as much as I  
14 appreciate you looking for compromise. The words Black Lives  
15 Matter should be permitted, not just BLM. That was a very  
16 quick conversation. I think he just basically said, okay.

17 And then later that day also I had a conversation with  
18 Jaime who was assistant store team leader on the second floor  
19 parking lot. Jaime was leaving. He was done for the day.  
20 He was heading to his car. I was up on the second floor  
21 gathering carts. I was still wearing the necklace which I  
22 knew I was not supposed to, and Jaime just sort of looked at  
23 me, sighed, let me know that it had been a really long day.  
24 He had been having that conversation with team members all  
25 day long about, uniform violations, and that it had been a

1 really difficult day.

2 And we had had a conversation about -- you know, I made  
3 it clear. I always had a good relationship with Jaime. I  
4 like my job here. I don't want to lose my job, but I'm not  
5 going to be willing to just back down on this issue. And  
6 that, you know, this issue is not going away. Jaime  
7 expressed to me that he hopes Whole Foods changes course. It  
8 would be a lot, you know, he expressed that he hoped Whole  
9 Foods would change their policy and allow us to wear Black  
10 Lives Matter adornments, but that, you know, he's going to  
11 have to do his job.

12 Q. Did he talk about -- at all about the necklace that you  
13 were wearing?

14 A. He said I'm off the clock. So, you know, I'm not going  
15 to basically -- he referenced it. He acknowledged it and  
16 basically said, I'm off the clock. So I'm not going to tell  
17 you to take it off.

18 Q. Any other conversations that you had with management  
19 about wearing any type of Black Lives Matter or BLM written  
20 on any adornments?

21 A. I had several conversations with Valerie Johnson.

22 Q. Do you recall, when was that in relation to the other  
23 conversations that you just testified about?

24 A. The first one that was in person and not, you know, the  
25 email asking for clarification, was -- well, I'm not positive

1 when the first one was. The one that's clearest in mind is  
2 when -- at this point, I was wearing a -- the one that said  
3 BLM that I had painted. So this is after these other  
4 conversations that we just discussed. I'm sure there were  
5 some with Valerie before that, but the one that I'm  
6 remembering first right now was -- yeah, definitely after  
7 that conversation with Jaime, after July 9th. And I was  
8 wearing the rectangular plastic one that just had the letters  
9 BLM.

10 And it was a similar sort of thing where I think Valerie  
11 had just clocked out and saw me wearing the necklace and was  
12 like, I'm glad I'm off the clock. So I'm just not going to  
13 say anything to you about it, but -- and then we did continue  
14 to talk by the booth. Valerie was off the clock. I was  
15 starting my shift.

16 And we had a chat. Valerie expressed frustration, you  
17 know. I went over the issues of -- because Valerie and I  
18 joked about several times how she was a little bit better  
19 enforcing the uniform policies than some of the other teams,  
20 and she would see other team members, team members from other  
21 departments walking around the store and there were lots of  
22 clear violations and Valerie was expressing them. I mean  
23 what does Whole Foods expect? Like they did not enforce the  
24 uniform policy. Now, they enforce this, a very bad look.  
25 And so, you know, we had that conversation. You know, it was

1 after July 9th.

2 We had -- it wasn't, you know, I remember a conversation  
3 back in -- I forget the name of the office, but it's a room.  
4 I can picture where it is, but basically a room where there's  
5 a lot of computers that's not just for leadership to go write  
6 their emails, but store team leaders have their own office.  
7 This office, team leaders will also use to do work on a  
8 computer. And Valerie was sitting at her computer doing some  
9 work. This was definitely in --

10 MR. FERRELL: Objection. Oh, I was just going to ask  
11 about the timing.

12 THE WITNESS: Before July 9th certainly, much closer to  
13 the beginning of when I started wearing a pin. I could not  
14 tell you an exact date, but this would have still been in  
15 June.

16 Q. BY MR. PETERSON: Was anyone else present?

17 A. I don't think. No, this would have been towards the end  
18 of one of my shifts. We often had conversations. I had a  
19 good relationship with Valerie. We often had conversations  
20 right at the end of shifts when there's almost no one left.  
21 She's writing her pass, and we would chat for a few minutes,  
22 and then I would go. I was often one of the last people in  
23 the store. So it was towards the end of a shift, just the  
24 two of us, and I forget what they call this office but it's,  
25 you know, the computer room essentially.

1 JUDGE SOTOLONGO: What did she say and what did you say?

2 THE WITNESS: A lot of frustration about this being the  
3 first --

4 JUDGE SOTOLONGO: Well, let me --

5 THE WITNESS: I can't tell you her exact words.

6 JUDGE SOTOLONGO: I know. Why don't you try your best.  
7 You're sort of summarizing the conversations, and that's not  
8 very helpful. You need to pretend you are on a recording  
9 device, and you're just playing out the conversation for us.  
10 I know that's very hard to. This was 2 years ago, but to the  
11 best of your knowledge, you have to tell us. She said this.  
12 I said this. She said that. I said that. Rather than  
13 summarize it. So tell us exactly what you recall her saying  
14 and tell us exactly what you recall yourself saying to the  
15 best you can.

16 THE WITNESS: I understand. Let me think. So I think  
17 I'm saying like can you believe they're doing this? Can you  
18 believe that this is the issue Whole Foods is choosing to put  
19 their foot down on? And Valerie's saying, what do you  
20 think's going to happen, you know? If you don't enforce the  
21 uniform policy. I see these other team members walking  
22 around, wearing whatever they want, you know. This is what's  
23 going to happen.

24 JUDGE SOTOLONGO: Anything else you recall yourself or  
25 her saying?

1           THE WITNESS: In that conversation, not really. I mean,  
2   yeah, I have general ideas, but like you said, that's not  
3   helpful. I had a lot of conversations with Valerie, and a  
4   lot of them we did talk about racism. I can remember some  
5   specific things about racism at Whole Foods that were not  
6   that conversation, but in that conversation, that's the best  
7   I can do unfortunately. It is 2 years ago. So.

8   Q.   BY MR. PETERSON: The conversations that you -- that  
9   you're remembering some details of, do they occur before or  
10  after you were wearing the Black Lives Matter messaging if  
11  you recall?

12  A.   Before and after.

13  Q.   So you can't remember specific dates, but you do  
14  remember some specific subjects that you discussed with her.  
15  Is that --

16  A.   Yeah. I mean one most clearly but, yes, you know.

17  Q.   And what do you remember most clearly?

18           MR. FERRELL: I'm going to object to foundation. I'm  
19  not sure the witness has actually testified he remembers the  
20  specific date when this conversation allegedly took place.

21           MR. PETERSON: He definitely testified that he doesn't  
22  remember the specific date, and I think he's established a  
23  foundation in here. You'll have to give it the weight --

24           MR. FERRELL: It sounds like the absence of a  
25  foundation.



1 MR. PETERSON: I would say he remembers -- I mean if he  
2 remembers any details.

3 JUDGE SOTOLONGO: Okay. Basically you have to ask a  
4 foundation on when the conversation occurred. I don't  
5 recall. And then if there's something that happened here,  
6 too, before these events, that would be very helpful, you  
7 know.

8 MR. PETERSON: Yeah, that's fair.

9 Q. BY MR. PETERSON: Do you remember anything, and I can  
10 try and pinpoint, and if you don't, if you don't remember,  
11 you don't remember. That's fine, but any conversations about  
12 specific issues of racism that you talked about with Valerie  
13 after June 1st of 2020? And I don't -- I'm not asking you to  
14 guess.

15 A. I'm trying to orient myself. So, yeah, June 1st. I  
16 mean I know that there is at least two conversations that,  
17 you know, I've mentioned both about the -- how disappointing  
18 it was that they're enforcing this issue, and then, you know,  
19 I believe within those conversations, we referenced the  
20 conversation I was trying to talk about before that, no, I  
21 could not say a date for. So there's references.

22 I was well aware of Valerie having issues of racism  
23 within Whole Foods. And so that's what I'm trying to get at,  
24 and I do have specifics for that but, you know, I'm just --  
25 just in being honest can't say like, yeah, well, June 13th is

1 when I said blah, blah, blah, and you said, blah, blah, blah,  
2 but I do know some things that we said back and forth. It's  
3 just --

4 Q. Yeah. That's fair.

5 A. -- you know, I can't say honestly what day it was, no, I  
6 can't. So.

7 Q. I appreciate that. Did you -- so did you continue to  
8 wear the BLM necklace after your -- after that -- I forget  
9 the most recent conversation you had testified about?

10 A. Yeah, July 9th, the only reason I know that date is it  
11 was in my affidavit I believe.

12 Q. Okay.

13 A. So I believe after July 9th, yes, I definitely continued  
14 to wear Black Lives Matter adornments. Yes.

15 Q. And I think you testified about all the conversations  
16 you had with management about wearing those adornments or do  
17 you remember any more?

18 A. Not with certainty I don't, no.

19 Q. Did you ever -- did you continue -- did you ever stop  
20 wearing the last adornment that you describe, the BLM plastic  
21 necklace?

22 A. Eventually I did stop, yes.

23 Q. And do you recall about when that was in relation to  
24 July 8th?

25 A. No, I would guess it was within a couple of weeks of

1 July 8th. It was not a very long time. So I would guess  
2 less than 2 weeks from July 8th is when I stopped wearing the  
3 BLM necklace.

4 Q. What led you to stop wearing the BLM necklace?

5 A. That I was aware of other team mates were getting  
6 corrective actions for wearing a BLM pin, a necklace,  
7 anything. At that point, it had been made clear any BLM,  
8 anything will give you a corrective action. I was willing to  
9 get a corrective action, but I had been given counsel that  
10 there was no point in it. It's not going to help our case if  
11 they're going to give you corrective action for wearing it.  
12 At that point, I was already talking to the NLRB. Well, I  
13 was already working with a lawyer, and I was told just keep  
14 doing the work you're doing but you can take the necklace  
15 off.

16 Q. Okay. Thank you.

17 MR. PETERSON: I have no further questions.

18 JUDGE SOTOLONGO: Okay. All right. So it is 25 till 6.  
19 what would you like to do? And now, I understand just for  
20 the record that you have some I guess child care issues  
21 tomorrow, and you can't be here until about 10?

22 THE WITNESS: Correct.

23 JUDGE SOTOLONGO: But you could be here at 10?

24 THE WITNESS: Yeah, parking, the whole thing but, yeah,  
25 I can be here at 10.

1 JUDGE SOTOLONGO: Okay. So what would you like to do?

2 MR. FERRELL: I'd like to get his Jencks statement, and  
3 my suggestion would be start at 10, and we'll be done before  
4 lunch.

5 JUDGE SOTOLONGO: Okay. All right. So let's do that  
6 and can you let us know what you have lined up for early  
7 afternoon?

8 MR. PETERSON: Yes, I hope so. There's some juggling,  
9 but I will make every effort to have --

10 JUDGE SOTOLONGO: All right. So let's call it a day.  
11 Mr. Read, so please don't discuss your testimony with any  
12 other witness or potential witness in this matter. You can  
13 certainly talk to the attorneys. But don't discuss your  
14 testimony with any other witness in this matter until the  
15 whole thing is over which will not be over until at least  
16 late August or so. Anyway, and we'll see you tomorrow at 10.  
17 Thank you.

18 THE WITNESS: All right.

19 JUDGE SOTOLONGO: All right.

20 MR. PETERSON: I have an 8 page affidavit of Mr. Read  
21 that I just received.

22 JUDGE SOTOLONGO: All right. So we're adjourned until  
23 tomorrow at 10.

24 **Off the record.**

25 **(Whereupon, at 5:35 p.m., the hearing in the above-entitled**

1   matter was continued, to resume the next day, Wednesday,  
2   June 8, 2022, at 10:00 a.m.)

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1                                    C E R T I F I C A T I O N

2            This is to certify that the attached proceedings before  
3    the National Labor Relations Board (NLRB), Region 4, in the  
4    matter of **WHOLE FOODS MARKET SERVICES, INC.,**  
5    **Case Nos. 01-CA-263079, 01-CA-263108, 01-CA-264917, 01-CA-265183,**  
6    **01-CA-266440, 01-CA-273840, 04-CA-262738, 04-CA-263142,**  
7    **04-CA-264240, 04-CA-264841, 05-CA-264906, 05-CA-266403,**  
8    **10-CA-264875, 19-CA-263263, 20-CA-264834, 25-CA-264904,**  
9    **32-CA-263226 and 32-CA-266442, on June 7, 2022, was held**  
10   according to the record, and that this is the original,  
11   complete, and true and accurate transcript that has been  
12   compared to the recording, at the hearing, that the exhibits  
13   are complete and no exhibits received in evidence or in the  
14   rejected exhibit files are missing

15                                      
16                                    \_\_\_\_\_

17                                    Bradley E. Weirich

18                                    Official Reporter

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 04

<p>In the Matter of:</p> <p>WHOLE FOODS MARKET SERVICES, INC.,</p> <p style="text-align: center;">Respondent,</p> <p>and</p> <p>SAVANNAH KINSER, SUVERINO FRITH, LYLAH STYLES, ABDULAI BARRY, KIRBY BURT, KAYLEB CANDRILLI, LEEA KELLY, TRUMAN READ, HALEY EVANS, JUSTINE O'NEILL, JOLINA CHRISTIE, SARITA WILSON, CAMILLE TUCKER-TOLBERT, CASSIDY VISCO, YURI LONDON, ANA BELEN DEL RIO-RAMIREZ, CHRISTOPHER MICHNO, As Individuals,</p> <p style="text-align: center;">Charging Parties.</p>	<p>Case Nos: 01-CA-263079 01-CA-266440 01-CA-263108 01-CA-264917 01-CA-265183 01-CA-273840 04-CA-262738 04-CA-263142 04-CA-264240 04-CA-264841 05-CA-264906 05-CA-266403 10-CA-264875 19-CA-263263 20-CA-264834 25-CA-264904 32-CA-263226 32-CA-266442</p>
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The above-entitled matter came on for hearing pursuant to notice, before **ARIEL SOTOLONGO**, Administrative Law Judge, at **National Labor Relations Board, The Wanamaker Building, 100 East Penn Square, Suite 403, Philadelphia, Pennsylvania**, on **Wednesday, June 8, 2022**, at **10:00 a.m.**

**A P P E A R A N C E S**

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1		<u>I N D E X</u>				
2						<b>VOIR</b>
3	<b><u>WITNESSES</u></b>	<b><u>DIRECT</u></b>	<b><u>CROSS</u></b>	<b><u>REDIRECT</u></b>	<b><u>RECROSS</u></b>	<b><u>DIRE</u></b>
4						
5	Truman Read	--	1497	1565	1593	--
6				1590		
7						
8	Leea Kelly	1598	1643	1726	--	1668
9						1672
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1		<u>E X H I B I T S</u>	
2	<u>EXHIBIT</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
3	GENERAL COUNSEL'S		
4	GC-48	--	1604
5	GC-49	--	1496
6	GC-55	1632	1637
7	GC-57	1727	1729
8			
9	RESPONDENT'S		
10	R-56	1530	1536
11	R-57	1548	1555
12	R-58	1561	1564
13	R-59	1667	1669
14	R-60	1670	1673
15	R-61	1682	1685
16	R-62	1694	1696
17	R-63	1718	1719
18	R-64	1722	1726
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P R O C E E D I N G S

(Time Noted: 10:00 a.m.)

1 JUDGE SOTOLONGO: Good morning. It is now Wednesday,  
2 June the 8th. We're resuming the testimony in the case of  
3 Whole Food Markets. I want to add Mr. Zaffarese --

4 MR. ZAFFARESE: Zaffarese. Yes, Your Honor.

5 JUDGE SOTOLONGO: Zaffarese is how we pronounce it.  
6 Mr. Zaffarese has joined us here this morning. He's here  
7 representing the Charging Parties.

8 And also just on a preliminary matter General Counsel  
9 reminded me that yesterday he forgot to move for the  
10 admission of General Counsel's 49, which was marked  
11 yesterday, and there was some testimony about that exhibit.  
12 Understand that Respondent has no objection to the admission  
13 of General Counsel's 49; is that correct?

14 MR. FERRELL: That's correct.

15 JUDGE SOTOLONGO: All right. So General Counsel's 49 is  
16 admitted.

17 (General Counsel Exhibit 49 received in evidence.)

18 JUDGE SOTOLONGO: Very well. Any other preliminary  
19 matters before we resume the testimony of Mr. Read?

20 MR. PETERSON: No, Your Honor.

21 JUDGE SOTOLONGO: All right, Mr. Read, please take the  
22 stand. I want to remind you that you're still under oath.  
23 And you can remove the mask for your testimony.

1 (Whereupon,

2

**TRUMAN READ**

3 was called as a witness, and after having been previously  
4 duly sworn, was examined and testified, as follows:)

5 JUDGE SOTOLONGO: Again, I want to ask all counsel, all  
6 other counsel except the lead counsel to keep your masks on  
7 -- that's part of the regs.

8 All right. Mr. Ferrell, ball's in your court

9 MR. FERRELL: Thank you, Your Honor.

10

**CROSS-EXAMINATION**

11 Q. BY MR. FERRELL: Mr. Read, you testified yesterday you  
12 worked as a Whole Foods' team member at the South Street store  
13 in Philadelphia part-time from February 2019 to September 2021;  
14 is that correct?

15 A. That's correct.

16 Q. Your job classification during that entire time was as a  
17 sanitation team member?

18 A. Correct.

19 Q. And that's the job classification that's generally given  
20 to maintenance and custodial tasks?

21 A. Correct. Throughout the store it's always referred to  
22 maintenance. On the paperwork it said sanitation. That term  
23 is never used.

24 Q. But during the summer of 2020, you testified you mostly  
25 worked as a cashier assistant; is that right?

1 A. Correct.

2 Q. As a cashier assistant you were working at the front of  
3 the store?

4 A. So it's under the front end department, but I would be  
5 throughout the entire store. I would always be checking back  
6 in to the front near the cash registers, but my duties would be  
7 all over the public and private spaces of the store.

8 Q. And some of those duties I think you testified included  
9 work at the checkout area where customers check out where  
10 bagging is done; is that right?

11 A. Yes, sometimes.

12 Q. And also gathering and replacing customer shopping carts  
13 in the parking garage or parking area, right?

14 A. Correct.

15 Q. So you work in an area where you were visible to the  
16 customers coming in and out of the store, right?

17 A. Correct.

18 Q. In terms of your hours during the summer of 2020, I  
19 believe you testified that you generally worked on weeknights  
20 from 7 p.m. to 11 a.m.?

21 A. Correct. Including one weekend shift. Sometimes two, but  
22 generally one either Saturday or Sunday shift, from 2:30 to  
23 10:30.

24 Q. And how many days a week during the week would you  
25 typically work?

1 A. Usually four weeknights; occasionally five, but usually  
2 four.

3 Q. Did I also understand you to say that you worked on  
4 average about 20 to 28 hours a week?

5 A. I believe 20 to 29, yeah. I think I was mandated by my  
6 classification. I was a part-time employee. I don't think I  
7 was allowed to go above 29. I'm not sure I was allowed to go  
8 under 20, but I never did.

9 Q. So those shifts of 7 p.m. to 11 -- 11 a.m., or 11 p.m.?

10 A. 11 p.m.

11 Q. I see. Those were four-hour shifts during the week, and  
12 then was it an eight-hour shift on the weekends sometimes?

13 A. Correct.

14 Q. Okay. And your direct supervisor at least during the  
15 summer of 2020 was the store support team leader Valerie  
16 Johnson, right?

17 A. Correct. The entire time I was there she was my direct  
18 supervisor. There was some time where I worked some grocery  
19 shifts, but I was still always technically a front end team  
20 member. So she's technically always been my direct supervisor.

21 Q. You testified you personally wore visible Black Lives  
22 Matter messaging while working at the South Street store about  
23 two dozen times; is that right?

24 A. I do remember making that approximation. It's a rough  
25 approximation. Having discussed it more yesterday, I would

1 guess it was more than that because there was about a month-  
2 long period where I was wearing Black Lives Matter messaging.  
3 So if I had a chance to re-estimate, it would be closer to 30  
4 to 36 times or so. It definitely is a guesstimate.

5 Q. Now and I was going to ask you about the time. The time  
6 period that you were wearing it regardless of the exact number  
7 was from late June until when?

8 A. I would -- yes, late June until sometime in July, I think  
9 late July.

10 JUDGE SOTOLONGO: Just to be clear, talking about 2020,  
11 correct?

12 THE WITNESS: Correct, yes. Late June of 2020 to late  
13 July of 2020.

14 Q. BY MR. FERRELL: And the Black Lives, Black Lives Matter  
15 messages, messaging that you wore while working consisted of  
16 either a pin or a necklace, right?

17 A. Correct.

18 Q. The pins you testified you wore on your Whole Foods  
19 Matter apron just above the chest area on the left side,  
20 right?

21 A. Correct.

22 Q. Now that apron, the Whole Foods Market apron, that's part  
23 of your store uniform, right?

24 A. The apron is part of the store uniform, yes.

25 Q. What else is part of in your job classification? What



1 else was part of your uniform?

2 A. So in my three different duties as a CA in the summer I  
3 was allowed to wear shorts. Other than that, I believe, the  
4 uniform was consistent regardless of what position I was in.

5 So the apron was always part of the uniform unless I was  
6 working as a CA in the summer pants were required. When I was  
7 working a maintenance shift shoes with a no-slip traction on  
8 the bottom were required. Possibly some sort of steel toe was  
9 required, but I can't remember, when I was working a  
10 maintenance shift. And then the uniform definitely mandated,  
11 like, you're, you're clothes shouldn't have holes in them, your  
12 apron should look neat, not stained, your name should be  
13 visible.

14 Q. There was -- a name tag, right?

15 A. That changed. At some points there was a printed white  
16 space on a black apron that you wrote your name on. At some  
17 points there was a pin with your name that you put on. I  
18 believe those were the only two versions of that. But I --  
19 yes, name visible, and there were restrictions on what shirts  
20 or pants you could be wearing under your apron.

21 Q. And the apron it had Whole Foods' logo, right, on it?

22 A. Yes.

23 Q. Was that in the center or on the -- where was that on the  
24 apron?

25 A. So we had different versions of the aprons. The one I

1 remember most clearly it was about in the center. Circle maybe  
2 two and a half-inch diameter pretty centered, pretty round, you  
3 know, pretty round -- I guess.

4 Q. Okay. And when you were wearing the Black Lives Matter  
5 pin, you were wearing it just to the left of the Whole Foods  
6 Matter logo?

7 A. Yeah, my left, yes. Maybe a little bit above to the left,  
8 yes.

9 Q. And when you wore your Black Lives Matter messaging  
10 necklace or necklaces, we'll talk about it, you wore that not  
11 underneath the apron.

12 A. Correct. It was visible.

13 Q. You wore it so it would be visible out over the apron,  
14 right?

15 A. Yes.

16 Q. And it was hanging down on your chest area?

17 A. Yes.

18 Q. Would it be hanging maybe over the Whole Foods Matter  
19 logo?

20 A. Swinging around on occasion I would assume yes.

21 Q. I mean, if you were just standing still, those things just  
22 drop straight down, right?

23 A. Yeah. But I think usually it was maybe a little bit  
24 shorter, so slightly above.

25 JUDGE SOTOLONGO: Is the Whole Foods, the Whole Foods'

1 logo on the left, center or right of the apron or --

2 THE WITNESS: Center.

3 JUDGE SOTOLONGO: Center. Okay.

4 Q. BY MR. FERRELL: Specifically you testified yesterday  
5 about wearing I think three different Black Lives Matter  
6 messages while working at the South Street store; is that  
7 right?

8 A. That's correct.

9 Q. One was the pin that said the words Black Lives Matter,  
10 right?

11 A. Correct.

12 Q. One was, I think, the same pin that you had converted to a  
13 necklace --

14 A. Correct.

15 Q. -- that said Black Lives Matter in the words, right?

16 A. Yes.

17 Q. You removed the safety pin mechanism, and put in some  
18 wire, maybe copper wire, converted it into a necklace, right?

19 A. The first time I wore it, it still was exactly the same as  
20 the pin unaltered. I just moved the string through the safety  
21 pin mechanism in the back. Then the second time I wore it, I  
22 believe the second -- would have been the third time I wore it,  
23 I had altered it as you suggested.

24 Q. And then the third Black Lives Matter adornment you wore  
25 on your uniform was a necklace that you had painted the letters

1 BLM on a piece of plastic; is that right?

2 A. That's right.

3 Q. And you also wore that similarly over the apron?

4 A. That's right.

5 Q. Outside the apron?

6 A. Yes.

7 MR. FERRELL: Does the witness have -- do we have the  
8 exhibits for the witness yesterday?

9 UNIDENTIFIED SPEAKER: Yeah.

10 MR. FERRELL: I'm looking for General Counsel's 49, to  
11 give it to him. Permission to approach.

12 JUDGE SOTOLONGO: Please. Go ahead.

13 General Counsel's 49 is this one --

14 **(Simultaneous aside comments.)**

15 Is it in there?

16 It's not in there. That's the one though.

17 Q. BY MR. FERRELL: Mr. Read, I've placed in front of you  
18 what's been admitted into evidence as General Counsel's Exhibit  
19 49. You testified about this yesterday here in your direct  
20 testimony. I believe this is a photo of your converted Black  
21 Lives Matter pin into a necklace that you were wearing over  
22 your apron uniform, right?

23 A. Yes.

24 Q. And so in this particular photo the string is over the  
25 Whole Foods Market logo, and the pin being converted to a

1 necklace it's just below in the middle of your chest, right?

2 A. Yes.

3 Q. Now, you knew at the time you were wearing the pin and the  
4 first necklace and the second necklace that Whole Foods  
5 Matter dress code does not allow you to wear pins or other  
6 adornments on your apron or over your apron that are not Whole  
7 Foods Market branding, right?

8 A. My understanding that evolved over the weeks, sometimes  
9 learning from hearsay or telegram or in conversations, at  
10 different times I was aware I'm not supposed to wear this, but  
11 there were, there were times where it was less clear, and I  
12 wasn't sure. There were times where I thought well I am  
13 allowed to wear a necklace is my understanding of the dress  
14 code.

15 JUDGE SOTOLONGO: This is before you had your conversation  
16 -- your conversation when the team leader told you that it was  
17 in violation of the dress code; is that correct?

18 THE WITNESS: Correct. Before I was told that.

19 JUDGE SOTOLONGO: All right. So you weren't aware of the  
20 policy -- you were aware of the fact that other employees had  
21 been told you couldn't wear this?

22 THE WITNESS: That they couldn't wear pins or necklaces?

23 JUDGE SOTOLONGO: Or either.

24 THE WITNESS: So, yeah, I, I -- become aware quickly as  
25 soon as it was determined -- as soon as one team member was

1 told they couldn't wear a pin, I would have found out through  
2 telegram pretty quickly.

3 JUDGE SOTOLONGO: Just to clarify.

4 BY MR. FERRELL: But you understood that wearing pins on  
5 the apron was a dress code violation?

6 A. The first time I wore a pin, I may have not. I had seen  
7 people wear other pins, and not be considered a violation. And  
8 I don't know -- it may have, but I, I was aware of a lot of  
9 things about the dress code as I laid out earlier, but I'm not  
10 -- at the time I was not positive about pin -- if we could put  
11 a pin on our apron or not.

12 Q. Now, you gave a witness affidavit to the NLRB when you --  
13 in support of your charge, right?

14 A. Correct.

15 Q. And you gave that to the Region 4 investigator, Region 4  
16 here in Philadelphia, the National Labor Relations Board?

17 A. So it was all virtual at the time. I wasn't sure that she  
18 was located in Philadelphia. I mean, I started filing through  
19 Philadelphia. My lawyer at the time was Peter Carr, from the  
20 same firm. He filed it for me. I remember I believe the  
21 representative was a Mary Leach, I want to say. I thought she  
22 was located outside DC for some reason but --

23 Q. Okay. But you had a chance to review your affidavit, and  
24 you signed it?

25 A. I did.

1 Q. And that was much closer in time than what we're talking  
2 about today, right?

3 A. Much closer.

4 Q. Matter of fact, it was August 18, 2020, is when you  
5 signed, right? That sound about right?

6 A. Sounds about right.

7 Q. And in your declaration you stated it has been, it has  
8 been my understanding that we cannot wear pins or other  
9 adornments on our apron unless they are officially WFM branded,  
10 right?

11 A. On August 18th, that would have been my understanding,  
12 yes.

13 Q. And WFM is the Whole Foods brand, right?

14 A. Whole Foods Market, yes.

15 Q. And prior to your wearing the Black Lives Matter pin on  
16 the apron, the only other politically motivated or human rights  
17 motivated pins that you had seen in the store were rainbow pins  
18 in support of LGBTQ rights?

19 A. I believe that's true, yes.

20 Q. So when you were wearing the pin and later the necklace  
21 after you had conversations with management that that's deemed  
22 a violation of dress codes -- you were violating the dress code  
23 knowingly, deliberately in an effort or protest to get Whole  
24 Foods to change its dress code, weren't you?

25 A. Yes.

1 Q. You wanted them to change their interpretation of the  
2 dress code to allow team members to wear Black Lives Matter  
3 messaging while working in the store; and that's the change you  
4 wanted them to make in the dress code, right?

5 A. In the dress code that was the change I wanted them to  
6 make, yes.

7 Q. And your means of trying to persuade them to do that was  
8 just to disregard the dress code, and to wear the pins or the  
9 necklace notwithstanding you were told it's a violation, right?

10 A. That was one of the means, yes.

11 Q. I think you testified yesterday you had conversations with  
12 some of the store leaders about this when they would tell you  
13 you've got to take the pin off, you've got to take the necklace  
14 off. I think you testified about conversations with -- is it  
15 pronounced Lamin Humma?

16 A. The last name I'm less certain about. We were on a first  
17 name basis. Lamin, yes.

18 Q. And was he the -- one of the associate store team leaders?

19 A. He was an interim store team leader, and I believe interim  
20 store team leader rather than interim -- I forget if the A  
21 stands for associate or assistant, but rather than an ASTL, I  
22 thought he was an interim store team leader.

23 Q. Interim store team leader.

24 A. Whenever he was on shift, he was the top person --

25 Q. Got you.



1 A. -- at the store.

2 Q. And the other person I think you talked about having these  
3 conversations with about the dress code, and you've got to take  
4 it off, was your direct team leader Valerie Johnson, right?

5 A. So also with Jamie --

6 Q. Jamie Kotmair?

7 A. That sounds about right, yeah, Jamie --

8 Q. And --

9 A. On first name basis with Jamie.

10 Q. And Jamie was another -- he was an associate store team  
11 leader, right?

12 A. Yes, he was.

13 Q. But you did talk to Valerie about the same thing, right?

14 A. Many times.

15 JUDGE SOTOLONGO: I believe I heard you say, correct me if  
16 I'm wrong, that Valerie Johnson was African-American or --

17 THE WITNESS: She is.

18 JUDGE SOTOLONGO: Okay. Go ahead.

19 Q. BY MR. FERRELL: You testified yesterday -- or let me ask  
20 it this way. Did I understand you correctly to testify  
21 yesterday, that at some point before or after July 9th,  
22 thereabouts, you told Valerie Johnson that one of the reasons  
23 or the reason you were wearing Black Lives Matter pin at work  
24 was to protest racism at the -- at the Whole Foods store at  
25 South Street, or racist practices or something like that at

1 the, at the store?

2 A. Yes. And that's where I'm in full transparency not able  
3 to time stamp and verbatim quote conversations. We had many  
4 conversations. It was almost -- we had a very good  
5 relationship, and it was something we discussed often, and the  
6 conversations do blur together in my memory. So it does make  
7 it complicated.

8 Q. But your testimony is that you told her you were wearing a  
9 Black Lives Matter pin because of race and equity issues at  
10 Whole Foods Market, South Street store?

11 A. Amongst other things, I'm sure that I did tell her that,  
12 yes.

13 Q. In fact, Mr. Read, isn't what you actually told  
14 Ms. Johnson that the reason you were wearing Black Lives Matter  
15 pin and the messaging, the reason it was so important to you,  
16 is that you needed to stand up for your own family, for your  
17 African-American wife, and your biracial children?

18 A. Again, there are many reasons. Yes, we discussed that as  
19 well.

20 Q. But that is the reason you told Ms. Johnson you were  
21 wearing the pin?

22 A. I don't think there was one definitive reason that I told  
23 her over the others.

24 Q. You also mentioned, and you mentioned again a moment ago  
25 as well as in your direct about speaking to Jamie on a

1 particular day. I think it was July 9th.

2 A. Yes, it was.

3 Q. You were working because you worked the evening shift. He  
4 was getting off. He was leaving. I think it was in the  
5 parking area, maybe gathering those shopping carts, and he was  
6 going to his car; is that correct?

7 A. Yes.

8 Q. And you had a conversation. You mentioned you had a good  
9 relationship with Jamie.

10 A. Yeah.

11 Q. Isn't it true, Mr. Read, that you also told Jamie that one  
12 of the reasons or the reason that this issue was so important  
13 and personal to you, and that you were not going to back off  
14 this issue, was because you needed to make a stand for your  
15 wife and your kids?

16 A. I don't remember saying that to Jamie, but I would believe  
17 that I did, but I wouldn't believe I said this is the only  
18 reason that I'm doing this. I believe I said this is one of  
19 the reasons.

20 Q. Now, how old are your children?

21 A. Currently three and six.

22 Q. All right. So they're not working anywhere, right?

23 A. They are not.

24 Q. And your wife doesn't work for Whole Foods either does  
25 she?

1 A. She does not.

2 Q. And your support for, for the Black Lives Matter was  
3 support for the Black Lives Matter movement that was going on  
4 at the time, right?

5 A. So it was an evolving -- trying to get the right word. My  
6 interest in the form of protest definitely evolved quickly, but  
7 it did shift as far as what my concerns were.

8 Q. Well, at the --

9 A. First -- sorry.

10 Q. At the time there were protests going on in the streets of  
11 Philadelphia, right?

12 A. Yeah.

13 Q. Black Lives Matter protests.

14 A. Yes.

15 Q. And they were spurred on following the killing of George  
16 Floyd at the hands of police at the end of May, right?

17 A. Yes. That was the, that was the biggest event, yes.

18 Q. Prior to the killing of George Floyd there were not Black  
19 Lives Matter protests in the streets of Philadelphia in 2020?

20 A. I certainly attended protests of Black Lives Matter -- was  
21 an expression heard and seen well before 2020. I don't know if  
22 in 2020 there were protests in Philadelphia before George Floyd  
23 was murdered in May.

24 Q. In 2020, you're not aware of any Black Lives Matter  
25 protests in Philadelphia before George Floyd was killed?

1 A. Off the top of my head, I am not.

2 Q. And before George Floyd's killing you're not aware of any  
3 Black Lives Matter pin wearing or other protest activity at the  
4 South Street store of Whole Foods?

5 A. That's correct.

6 Q. You've attended one or more Black Lives Matter protests in  
7 Philadelphia in the summer of 2020, right?

8 A. Much more than -- yeah, I -- maybe at least six.

9 Q. At least six?

10 A. Yeah. In Philadelphia or the surrounding areas.

11 Q. Did you carry signs at the protests?

12 A. I think only once. I find carrying signs around  
13 cumbersome. But at least in one protest that I was at with my  
14 whole family we were carrying signs.

15 Q. What did your protest sign say?

16 A. My sign that I was holding said I think, silence equals  
17 compliance, something to that extent.

18 Q. Silence equals compliance or silence equals violence; do  
19 you recall?

20 A. It wouldn't have been violence. Still have the sign. It  
21 was definitely my point that I was trying to communicate was  
22 that if you're not actively working to address -- if you're not  
23 an active participant in fighting against systemic racism  
24 you're part of the problem. I have the exact words -- I know  
25 silence was in there. I can't remember if it said silence

1 equals compliance.

2 Q. Complicit maybe?

3 A. I mean, yeah, I'm sorry. I'm going to be guessing, but  
4 that was the -- I generally remember the sentiments, and not  
5 verbatim words.

6 Q. Did you, did your -- was your family member carrying  
7 signs, your family as well?

8 A. They were.

9 MR. ZAFFARESE: I'll object to this while line of inquiry.  
10 I don't know what relevance this has to what actions my client  
11 did or did not take while in Whole Foods. What he does with  
12 his free time is no business of Whole Foods.

13 MR. FERRELL: Your Honor --

14 JUDGE SOTOLONGO: But, well, normally that's the case.  
15 Here we are trying a noble theory. And part of the  
16 Respondent's defense, as I understand it, is that the Black  
17 Lives Matter protests or the wearing pins at the store were  
18 motivation behind the -- basically the killing of George Floyd,  
19 and the protests against police -- am I correct?

20 MR. FERRELL: Yes, Your Honor.

21 JUDGE SOTOLONGO: And, therefore, I think, I think to some  
22 extent where normally there's sort of subjective views of a  
23 person's engaged in allegedly protected -- activity are not,  
24 not in question. In this known situation it may be. So I  
25 think it's part of the Employer's defense that that the

1 motivation wasn't related to working conditions at Whole Foods  
2 but, rather, the overall social movement sparked by, by the  
3 George Floyd killing. Am I explaining that correctly? Maybe I  
4 --

5 MR. FERRELL: In summary, yes, Your Honor. That --

6 JUDGE SOTOLONGO: I'm going to give Respondent some  
7 leeway. Go ahead, proceed.

8 Q. BY MR. FERRELL: Mr. Read, were any other members of your  
9 family carrying signs that day?

10 A. Yes.

11 Q. What did their sign say?

12 MR. PETERSON: Objection, relevance of what the family is  
13 carrying. This is even further afield than what the witness is  
14 doing. Any marginal relevance that even with the witness is  
15 doing, his private life is even less so --

16 MR. FERRELL: On the contrary. The witness has already  
17 testified that at least he would concede that one of the  
18 reasons he was wearing the pin was to stand up for his African-  
19 American wife and his biracial children; that that's one of the  
20 reasons at least that he was supporting the Black Lives Matter  
21 movement. And I haven't gotten to it yet, but they're three  
22 and six years old. I wouldn't be surprised if dad helped make  
23 the signs that they're carrying.

24 JUDGE SOTOLONGO: I'll allow it.

25 THE WITNESS: I did make the signs, and one of them said

1 my life matters.

2 Q. BY MR. FERRELL: Who was carrying the My Life Matters  
3 sign?

4 A. They traded at times, but my daughters -- I believe my  
5 eldest daughter carried that one the most. Another one said  
6 Black Trans Lives Matter. It was --

7 Q. Did you wear your pin that day or just the sign?

8 A. The day that we were carrying the signs I do not know. I  
9 doubt it. I don't remember the date for that protest. It was  
10 the largest protest that happened in Philadelphia. So it  
11 wouldn't be hard to find the date. It was by far the largest  
12 protest that happened. There were many protests, but this was  
13 the one where the streets were absolutely flooded. The City  
14 Hall, from -- and all over -- City Hall and in between.

15 Q. So thousands of attendees?

16 A. Certainly thousands, tens of thousands of attendees.

17 Q. Tens of thousands. Lots of signs?

18 A. Sure, yeah.

19 Q. Did you see signs that read Black Lives Matter?

20 MR. ZAFFARESE: Objection, Your Honor. Now we're  
21 describing the scene of a multi -- a thousand person protest is  
22 relevant?

23 JUDGE SOTOLONGO: Yeah. I think we're straying a little  
24 bit.

25 MR. FERRELL: Not at all, Judge. I need to be heard



1 about this. I understand counsel is coming into this case new,  
2 but a central issue in this case is what in -- what is being  
3 communi--

4 JUDGE SOTOLONGO: A person has walked into the --

5 **Let's go off the record for a second.**

6 **(Off the record from 10:30 a.m. until 10:31 a.m.)**

7 JUDGE SOTOLONGO: **Let's go back on the record.**

8 All right. We're back on the record. We had a upcoming  
9 witness who walked into the courtroom. In light of my  
10 sequestration order we -- making sure that the person was  
11 removed from the hearing room before we proceeded.

12 So go ahead, Mr. Ferrell. You were arguing the point.

13 MR. FERRELL: The central issue in the case is what Black  
14 Lives Matter, Black Lives Matter movement was objectively  
15 understood to mean and represent when team members while  
16 working are wearing BLM or wearing Black Lives Matter messaging  
17 on their uniform. What do people including most importantly  
18 our customers understand that they are communicating? Are they  
19 protesting -- what, what is it about that they are supporting  
20 or asking for support for? So the witness' attendance at a, at  
21 a rally with tens of thousands of people from the community at  
22 a Black Lives Matter protest where they're using the same sign,  
23 the same verbiage in their store buttons and in their store  
24 necklaces is certainly relevant to what is objectively  
25 understood that they're communicating; whether it's related to

1 work or whether it's related to a larger human rights movement.

2 JUDGE SOTOLONGO: All right. I'll allow it, but within  
3 certain boundaries. We don't want to stray into what the whole  
4 world's view of Black Lives Matter is. I'm going to allow it  
5 because the witness has testified that he was participating in  
6 these demonstrations and protests. And I would rather err on  
7 the side of letting it in, and then giving it whatever weight  
8 be it little or nothing or a lot when I make my decision rather  
9 than later being reversed by the Board -- said no you shouldn't  
10 have allowed this in, and then the issue arising was it this a  
11 crucial -- so I'll err on the side of letting it in, and then  
12 giving it the appropriate weight.

13 So please proceed.

14 MR. PETERSON: I'd just note that there is not a dispute  
15 over -- that there's a lot of different messages and meanings  
16 connected with Black Lives Matter protests. So I don't think  
17 we need very much testimony on this.

18 JUDGE SOTOLONGO: Well, yeah, I understand. And you can,  
19 you can say that, you can say that -- there's, I don't know,  
20 200, 300 million people with the views -- there's 300 million  
21 people who -- 300 million people have views on Black Lives  
22 Matter, and there's a million opinions of what it means. So  
23 having said that, please proceed.

24 Q. BY MR. FERRELL: So, Mr. Read, this rally, streets are  
25 flooded downtown Philadelphia Black Lives Matter rally or

1 protest, were there signs that said Black Lives Matter?

2 A. Yeah, there had to be.

3 Q. Signs that said just BLM?

4 A. I would assume so. I mean, I don't remember that, but I  
5 would bet my bottom dollar that, yes, there were.

6 Q. Did you see signs or -- was there chants too?

7 A. Yes.

8 Q. Chants or signs of no justice no peace?

9 A. (No audible response.)

10 Q. Is that a yes?

11 JUDGE SOTOLONGO: You've --

12 THE WITNESS: I'm sorry. I'm sorry. Yes.

13 Q. BY MR. FERRELL: What about chants or signs of defund the  
14 police?

15 A. Yes. I'm not sure if those are the exact words, but  
16 chants with that meaning, yes.

17 MR. ZAFFARESE: Your Honor, could I just make one  
18 objection for the record? I understand your ruling on -- I  
19 just want to put this on the record. The problem I had with  
20 this line of questioning is that if Martin Luther King attends  
21 the funeral of, of a black man who is lynched, does that mean  
22 that Martin Luther King's only purpose of being there is to  
23 protest lynching or is it a bigger social issue? And I -- the  
24 problem I had with this line of questioning is it's making the  
25 suggestion that the only thing that these people are there for

1 was the killing of George Floyd, and if that had not happened  
2 there would have been no other social issues with African-  
3 Americans in this country that need to be addressed. And I, my  
4 -- I find this line of questioning very problematic on that  
5 basis, but I understand your --

6 JUDGE SOTOLONGO: You have a standing objection, and duly  
7 noted, Mr. Zaffarese.

8 MR. ZAFFARESE: Thank you.

9 JUDGE SOTOLONGO: And like I said, I'd rather err on the  
10 side of allowing some of this in, and then giving it what I  
11 think ultimately decide is the appropriate weight. It may be  
12 that I find it to be of no value for the reasons discussed but  
13 that's something that I need to weigh. Given the notable  
14 issues presented by this case, I'd rather err on the side of  
15 letting it in. We don't have a jury whose verdict is -- we  
16 have to protect. And so I would rather let it in, and then  
17 I'll give it appropriate weight rather than -- now, I don't --  
18 having said that, I don't want to waste too much hearing time  
19 on evidence -- on evidence which may be circumstantial or may  
20 be ultimately not crucial in this case. So --

21 MR. FERRELL: Your Honor, we've spent more time on  
22 counsel's objections than my questions would have taken, and I  
23 only have a few more.

24 JUDGE SOTOLONGO: All right.

25 MR. ZAFFARESE: Thank you, Your Honor.

1 JUDGE SOTOLONGO: Proceed.

2 Q. BY MR. FERRELL: Were there chants or signs that said say  
3 their name or say his name?

4 A. Or say her name, yes.

5 Q. A sign that said say his name, do you know what that was  
6 referring to? What did you understand it to refer to?

7 A. Any sign saying say someone's name refers to someone who  
8 had been killed, a black person who has been killed.

9 Q. What about a, a sign or a chant at the rally, did you see  
10 I Can't Breathe?

11 A. Yeah. Sorry, yes.

12 Q. What do you understand I Can't Breathe to refer to?

13 A. Incidents where police officers have either murdered or  
14 near murdered people in their custody; restraining them in ways  
15 that restricted their breathing.

16 Q. Do you understand I Can't Breathe to be associated at all  
17 with George Floyd?

18 A. Embarrassed to say I'm not positive if I knew that to -- I  
19 know of other incidents where men either died or nearly died in  
20 police custody that I think predate the murder of George Floyd.  
21 So I may associate it with those incidents.

22 Q. Other instances of police brutality?

23 A. Yes.

24 Q. Toward African-Americans?

25 A. Yes.

1 Q. Did you see any signs at this protest or any of the other  
2 five Black Lives Matter protests you attended about Whole Foods  
3 Market?

4 A. Did I see signs about Whole Foods Market at this protest?  
5 I do not believe I did.

6 Q. Any chants about Whole Foods Market?

7 A. At this protest, no.

8 Q. Now, you lived through it, and attended a number of  
9 protests. So am I correct, Mr. Read, that in the summer of  
10 2020 you were very much aware, and remember the tension that  
11 was on the streets of Philadelphia?

12 A. During protests, yes. Outside of that, I would not  
13 classify my understanding of the streets of Philadelphia as  
14 having tension.

15 Q. Well, some of the Black Lives Matter protests, at least  
16 following them or coming out of them, turned into what the City  
17 declared to be riots, right?

18 A. I can't speak for what the City declares.

19 Q. Do you recall that there were riots?

20 A. No.

21 Q. You don't recall any riots?

22 A. Nothing I would define as a riot.

23 Q. Do you recall there being looting in the streets of  
24 Philadelphia?

25 A. None that I saw firsthand.

1 Q. Did you watch any news reports of looting?

2 A. I don't watch TV news. Can't stand it.

3 Q. You aware of any incidences or reported incidents of  
4 vandalism --

5 MR. ZAFFARESE: Objection, Your Honor. At this point --

6 MR. FERRELL: Your Honor --

7 MR. ZAFFARESE: -- cross

8 **(Simultaneous comments.)**

9 JUDGE SOTOLONGO: I understand your position,  
10 Mr. Zaffarese, but I'm overruling you.

11 Please proceed.

12 Q. BY MR. FERRELL: What about incidences of vandalism?

13 A. Did I witness those firsthand? No.

14 Q. Did you see any reports of vandalism coming out of the,  
15 the Black Lives Matter protests or demonstrations?

16 MR. PETERSON: Objection, vague, foundation.

17 THE WITNESS: Yeah, I don't watch the news. Sorry.

18 JUDGE SOTOLONGO: When there's an objection, Mr. Read --

19 THE WITNESS: I'm sorry.

20 JUDGE SOTOLONGO: -- allow me to rule on it. If I say  
21 overruled, it means you can go ahead and answer. If I say  
22 sustained, that means that the attorney will have to rephrase  
23 the question. But I -- in this case I'm going to allow it. So  
24 overruled.

25 THE WITNESS: I apologize.

1 JUDGE SOTOLONGO: That's all right.

2 Q. BY MR. FERRELL: So are you aware of any reports of  
3 vandalism?

4 A. I'm sure I saw in print or heard on NPR discussions about  
5 ways that things were being classified, and was aware vandalism  
6 was being discussed, yes.

7 Q. Vandalism being property destruction or defacement, right?

8 A. Yes.

9 Q. Just make sure we're talking about the same thing. You  
10 were aware that for a period of about a week in Philadelphia  
11 there was a curfew declared?

12 A. That sounds familiar, yeah.

13 Q. Right? From May 30 to June 6 there was a curfew declared  
14 coming out of the protest?

15 A. I'd have to take your word for it on the dates, but I do  
16 recall there being a curfew at some point, yes.

17 Q. In fact, the curfew, if you recall, was that all  
18 businesses had to be closed, and people who didn't have a good  
19 reason to be on the streets clear the streets by 8 p.m.?

20 A. I don't remember the stipulations of curfew.

21 Q. Well, it directly impacted your work hours, didn't it?

22 A. I suppose so. I, truthfully don't -- I actually worked  
23 past the store closing regularly. I was one of a few  
24 employees. I would be there when the night crews that were not  
25 Whole Foods -- they were contractors -- come in to polish the



1 floors and such. So my hours were not tied to the closing of  
2 the store. I don't remember a curfew affecting -- for, for a  
3 week-long period. I do remember times when the store closed  
4 early, but I don't -- yeah, I don't remember it affecting me  
5 that much.

6 Q. Do you recall the store being boarded up?

7 A. Yes.

8 Q. As one of the maintenance team members did you help in the  
9 boarding up?

10 A. Sometimes.

11 Q. So you applied the plywood to the store?

12 A. Sometimes.

13 Q. Covering the, the entrances and all windows, doors, and  
14 any glass, right?

15 A. Not all the glass. Certainly not all the glass, but, yes,  
16 entrances and some glass.

17 Q. Street level glass?

18 A. Not all the street level glass either. They never were  
19 that -- at least I don't think so.

20 Q. Mr. Read, you have before you what's in evidence as  
21 Respondent's Exhibit 49. This is the boarded up -- the front  
22 page is the boarded up front of the Whole Foods Market store  
23 where you worked. Do you recognize it with the, with the  
24 plywood over it?

25 A. Yeah. So I don't remember it being done this neatly

1 around the sort of bay view window style spots. So it clearly  
2 was boarded up more than once. Because I remember a time when  
3 it looked less neat than that. Yes, sorry, I recognize that.

4 Q. And the front page, that's the front of the South Street  
5 store?

6 A. It's, I believe, if you were looking at the front entrance  
7 of the South Street store standing, standing on South Street  
8 facing north, those would be to the right or the east of the  
9 front entrance, those windows. The front entrance is not in  
10 that picture.

11 Q. Oh, these are the, the bay windows to the right of the  
12 front entrance?

13 A. Correct, yeah, to the east.

14 Q. Can you turn to the third, the third page in the exhibit?  
15 Those are the other store windows of the South Street store  
16 boarded up?

17 A. Not all of them, but that is some of the other windows. I  
18 am trying -- this is on South Street, not on 10th Street, I  
19 believe. I don't see the doorway. I'm having a little bit of  
20 trouble orienting myself in this photo, but I do recognize it  
21 as being part of the Whole Foods store. I think the entrance  
22 would be sort of blocked by the things -- the very right of the  
23 picture, sort of below that cross-walk sign, or pedestrian  
24 crossing sign. My best guess is the entrance is somewhere past  
25 that.

1 Q. Now, you -- how many times did you assist in the boarding  
2 up of the store?

3 MR. PETERSON: Objection, relevance of his details about  
4 the boarding up of the store.

5 MR. FERRELL: It goes to our special circumstances. But  
6 the witness participated in the boarding up of the store.

7 JUDGE SOTOLONGO: Do we need to know how many nails were  
8 were applied? I mean --

9 MR. FERRELL: I didn't ask that question, Judge.

10 JUDGE SOTOLONGO: -- it's -- the picture is clear, and the  
11 testimony of another witness and the picture is already in  
12 evidence showing that in fact the board -- was boarded up.  
13 Now, it may be as to the witness says not every -- they may  
14 have missed a window here or there. Nonetheless, I think, I  
15 think the argument you try to make is that there was a period  
16 in time when there was civil disturbances in the City, and as a  
17 result of -- especially in view of the fact of the -- the store  
18 was right next door to a police station, which may be -- may  
19 have been the subject of some demonstrations or the focus on  
20 these demonstrations -- require the store to take these  
21 precautionary measures. I think -- I mean, how -- all the  
22 details I think are exceeding the bounds of what I think are --  
23 is really relevant.

24 Q. BY MR. FERRELL: Mr. Read, do you know why the store was  
25 boarded up, and why you were asked to assist in boarding up the

1 store?

2 A. It was never explicitly explained to me, but I'm sure I  
3 was making reasonable assumptions.

4 Q. What was your reasonable assumption about why you were  
5 being asked to help board up the store?

6 A. There was fear of property damage by either store -- I  
7 don't know -- who feared more the people that owned the store.  
8 Whole Foods actually rented that property, I believe. I don't  
9 know if it was the store owner or the store managers. I'm  
10 sorry, the building owner or the store managers. But I'm sure  
11 there was fear of property damage.

12 Q. Around or on June 23, you joined a team member chat group;  
13 do you recall that?

14 A. Yes.

15 Q. And on that chat group team members went by in an old  
16 school ode to -- the movie *Top Gun* -- I'm going to call it call  
17 signs. They went by names, right, other than the real name?

18 A. When I first joined -- again, I'd never been on social  
19 media, and I was the ignorant -- white guy that joined it with  
20 my real name, and quickly realized that it made me look silly,  
21 and eventually changed my name, but, yes, I think I was the  
22 only person that had their real name.

23 Q. You changed it to Cobalt Blue. That was you?

24 A. That's me.

25 Q. Right?

1 A. That was me.

2 Q. And there was another one of the other call signs one of  
3 your team members was Triple Bagged?

4 A. Yes.

5 Q. And in one of those chat posts, Triple Bagged commented  
6 that one of the problems with what Joe, Joe Burton, Joe Burton  
7 -- just take a pause -- Joe Burton was your store team leader  
8 at the time, right? In June.

9 A. Yeah. I don't know exactly when he was put on leave, but  
10 I believe in the beginning of June he was still the store team  
11 leader.

12 Q. And in the beginning of June, I know -- I believe you were  
13 working that day on June 1, but there was an incident that you  
14 became aware of that your co-workers were upset about when he  
15 offered food and water to police officers, right?

16 A. I became aware of that after the fact, yes.

17 Q. But in one of these chats after you joined it, your co-  
18 worker Triple Bagged, recounted what had been discussed at a  
19 recent town hall meeting that the team members had asked for  
20 with management, right, with leadership?

21 A. Right. I don't remember -- I don't -- there was a lot of  
22 chat. I do know, I do remember Triple Bagged, that's a call  
23 that's a call sign, a call name. I don't remember offhand if  
24 Triple Bagged commented on a specific meeting. Just a lot, a  
25 lot of chat.

1 MR. FERRELL: Permission to approach.

2 JUDGE SOTOLONGO: Go ahead. Is this a new Respondent  
3 exhibit?

4 MR. FERRELL: It is.

5 Mr. Read, I've handed you what's been marked for  
6 identification as Respondent's Exhibit 56.

7 **(Respondent Exhibit 56 marked for identification.)**

8 Q. BY MR. FERRELL: This is a chat post that you produced  
9 pursuant to subpoenas included in your production. This  
10 particular post that I'm going to direct your attention to at  
11 the top of the page is Triple Bagged. That's a name or code  
12 name or whatever for one of your team members, right?

13 A. Correct.

14 Q. And this included in your production means it's a chat  
15 post that came in after you joined the chat group, right?

16 A. If it was after the 23rd, then yes.

17 JUDGE SOTOLONGO: Was the chat room on Instagram or was it  
18 on Telegram? Do you --

19 THE WITNESS: Telegram.

20 JUDGE SOTOLONGO: Telegram.

21 THE WITNESS: I wasn't involved in -- I, I didn't have  
22 Instagram at the time. So --

23 Q. BY MR. FERRELL: And direct your attention at the top  
24 there, Triple Bagged states we also talked about the  
25 consequences of Joe's actions, and how it's basically turned

1 Whole Foods into a beacon for racists slash police  
2 sympathizers, and how that inherently affects all the employees  
3 that work there. Do you see that post at 6:30 p.m.?

4 MR. PETERSON: Objection. So I'm objecting to, one, the  
5 relevance of these private chats. We've had a lot of  
6 discussions about the private chats; and especially this one's  
7 undated. It's not clear whether the witness had joined the  
8 chat by this time. And then the follow-up objection is just  
9 the cherry-picking nature of this. The rule of completeness.  
10 I mean, if this is -- if this type of stuff is going in, this  
11 is, this is the stack of Telegram chats that should also go in,  
12 in fairness. If any of this is going in, then going to be  
13 burdening the record.

14 MR. FERRELL: Judge, General Counsel's 49 was the same  
15 thing, a one-pager pulled from the production of Mr. Read --

16 JUDGE SOTOLONGO: All right. Well --

17 **(Simultaneous comments.)**

18 JUDGE SOTOLONGO: -- some of the chat comments may be  
19 relevant, some may not be. We have allowed some of them in.  
20 And I think a better question is whether this is the proper  
21 witness to authenticate this, this particular comment? I mean  
22 I would say this -- he is not, the witness is not the person or  
23 the individual who made these comments. It was this whoever  
24 Triple Bagged was. I mean, we haven't asked about that. But  
25 so it's one of authenticity, and this witness may not be able

1 to address --

2 MR. FERRELL: It's not an authenticity issue. This is  
3 produced by -- this is from Mr. Read's production. And the  
4 only reason there's not a name on it is Mr. Read, Mr. Read's  
5 counsel didn't produce it with the date on it. I don't mean  
6 name; date. We complained about that, but we have the  
7 production that Mr. Read gave in response to the subpoena.  
8 It's not an issue about whether it occurred after June 23.  
9 It's from Mr. Read's production, and he testified he joined the  
10 chat group on June 23. It's also in his --

11 JUDGE SOTOLONGO: Let's --

12 MR. FERRELL: -- affidavit.

13 JUDGE SOTOLONGO: Let's see if the witness can, can -- go  
14 ahead.

15 Q. BY MR. FERRELL: Mr. Read, directing your attention to the  
16 Triple Bagged post that I just read from the Telegram chat  
17 room. Do you understand the Joe's -- consequences of Joe's  
18 actions? Did you understand what Triple Bagged was referring  
19 to?

20 A. I did become aware of -- after the fact of him giving food  
21 to the police. I don't know if it was just food. A cart of  
22 products. So, yeah, I was -- I was able to figure out what  
23 he's talking about; they were talking about.

24 Q. In discussions with your team members and your, your co-  
25 workers at the South Street store was this another source of



1 safety concern for the team members that by Joe's actions of  
2 giving food and water to the police at the time the Black Lives  
3 Matter protests were going on that the store had become a  
4 beacon for, for racists?

5 A. I don't -- I wouldn't say -- I can't confirm that. I  
6 could confirm in my opinion I, I certainly heard people express  
7 they felt less safe in the store because there were lots of  
8 cops coming into the store, lots of police officers coming into  
9 the store. And so when I say they, either black team members  
10 or some trans team members expressed the same thing they don't  
11 feel safe around police. And so that was a concern with them.

12 Q. But the concern being expressed here by your co-worker  
13 Triple Bagged was that Whole Foods had become a beacon for  
14 racists and police sympathizers.

15 MR. PETERSON: Objection. The document speaks for itself.

16 MR. FERRELL: I'm asking --

17 JUDGE SOTOLONGO: Well, he can -- Mr. -- I mean, the  
18 problem is Mr. Ferrell is that the witness cannot address -- he  
19 can, he can vouch for the fact -- say, yes, I remember this  
20 chat being posted by Triple Bagged, but this witness cannot  
21 speak to the subjective motivations of that individual. He can  
22 authenticate it being something that was expressed in general.  
23 He can testify whether similar feelings were expressed by  
24 others to him in the store, but ultimately --

25 MR. FERRELL: That's what I'm, what I'm asking, Judge, is

1 whether that was a discussion among the co-workers about not  
2 just concerns about police officers, but racist police  
3 sympathizers being drawn to Whole Foods because it had become a  
4 beacon based on Joe's actions of giving food and water to the  
5 police.

6 MR. PETERSON: That's -- I'm sorry. There's still an  
7 objection pending. And I'll also say there's been a lot of  
8 testimony about the subjective motivations of different  
9 employees. I've had some of my attempts to get testimony in  
10 overruled, and as has the Respondent. So we've been limiting  
11 the subjective impressions to, to a degree. If the subjective  
12 impressions of the employees are relevant here, then they  
13 should be, then they should be relevant, and I should be  
14 allowed to ask --

15 MR. FERRELL: I'm not even sure what counsel is talking  
16 about, to be honest with you. I'm -- but I'm talking about the  
17 safety concerns that were being expressed by team members, and  
18 there's one here. We're not allowed. We've been disallowed  
19 from finding out the identity and subpoenaing these people, and  
20 bringing them in to testify. I disagree with that decision.  
21 Frankly, it hampers our defense, but we're proceeding as best  
22 we can.

23 JUDGE SOTOLONGO: I'm allowing the witness to testify  
24 whether -- he knew that other employees -- this was the topic  
25 of discussion -- the presence of police in the store, and the

1 safety concerns, whether that was a -- that was part of the  
2 discussion and, and perhaps part of the motivation for wearing  
3 BLM messaging. So that, I'll allow that. Go ahead.

4 Q. BY MR. FERRELL: Mr. Read, do you recall the question?

5 A. Can you repeat it, please?

6 Q. You talked about there was an uncomfortability or fear  
7 expressed by your team members about police officers being in  
8 the store. But Triple Bagged in this post is talking about  
9 racist police sympathizers being drawn to the store based on  
10 Joe's actions and that concern. Do you recall that being  
11 another expression of concern about safety; or was that only  
12 Triple Bagged who cared about that?

13 A. I don't remember that being nearly as prevalent. Whereas  
14 it's like I know I had some conversations people told me they  
15 don't feel comfortable around lots of police officers. I, I  
16 think I remember one other time that I, I vaguely remember  
17 something else that came up in Telegram, people mentioning one  
18 other racist customer or one other incident where they wanted  
19 management to do more in addressing racist customers. So,  
20 yeah, I vaguely remember like two times that was discussed  
21 outside of this. Just by memory right now.

22 MR. FERRELL: Your Honor, move to admit Respondent's  
23 Exhibit 56.

24 MR. PETERSON: Object for the reasons stated.

25 JUDGE SOTOLONGO: I'll allow it. Respondent's 52 is

1 admitted.

2 MR. FERRELL: 56.

3 JUDGE SOTOLONGO: 56. Excuse me, 56.

4 **(Respondent Exhibit 56 received in evidence.)**

5 Q. BY MR. FERRELL: Mr. Read, there's -- we talked some about  
6 your wearing Black Lives Matter messaging while working.

7 That's in the store at South Street. And we've talked some  
8 about your attendance at a half a dozen Black Lives Matter  
9 protests in, in and around Philadelphia, right?

10 A. Yes.

11 Q. Is it your contention that the phrase Black Lives Matter  
12 or the Black Lives Matter movement or BLM has a different  
13 meaning inside the Whole Foods store and outside the Whole  
14 Foods store?

15 A. They're about the same, my understanding of the meaning of  
16 the phrase, which is frustrating, but -- can I explain what I  
17 think the phrase means?

18 Q. Well, let me ask you this. Are you saying it has a  
19 different meaning or the same in the store and outside the  
20 store?

21 A. I think context always affects meaning, but my  
22 understanding of what Black Lives Matter means is --

23 Q. Well, let's skip --

24 MR. PETERSON: Allow the witness to answer. He's asked  
25 the question.

1 JUDGE SOTOLONGO: Let him --

2 MR. FERRELL: Objection, nonresponsive. My question was  
3 do -- you're saying it has a different meaning when you wear it  
4 in the store versus out of the store? And that's the limit of  
5 my question. Counsel wants to ask different questions, counsel  
6 needs to ask those questions.

7 JUDGE SOTOLONGO: The witness is explaining his  
8 understanding which I think is responsive to your question.

9 Q. BY MR. FERRELL: My question is does it have a different  
10 meaning?

11 A. Yeah. I think context affects it, I do. But I'm sorry, I  
12 see lots of nuance in, in life, and some of the meaning is  
13 global certainly, but, but I only wore that pin -- earlier you  
14 asked if I wore that to protests. I said I doubt it. And then  
15 when I thought about it, that pin stayed with my work clothes.  
16 I never wore it outside the store. That pin specifically had  
17 meaning for while I worked at Whole Foods as did the necklaces.

18 Q. But, Mr. Read, you're --

19 MR. PETERSON: He's still answering.

20 MR. FERRELL: He's not.

21 MR. PETERSON: He said but.

22 MR. FERRELL: I appreciate that counsel may not be happy  
23 with all the questions counsel --

24 JUDGE SOTOLONGO: Please address me, and not each other.  
25 Ask your next question. Please ask your next question.

1 I mean you may not like the answer, but he -- I think he  
2 answered the best way he could.

3 MR. FERRELL: I'm fine with that answer. I'm just moving  
4 to the next question.

5 MR. PETERSON: His answer wasn't complete. He was still  
6 giving his answer.

7 JUDGE SOTOLONGO: Well, I will appreciate that -- before  
8 any objections are made that you allow counsel to complete his  
9 question, and I'll appreciate it if counsel allows the witness  
10 to finish his or her answer before proceeding on to the next  
11 question or before interrupting the witness.

12 Q. BY MR. FERRELL: Mr. Read, the messaging you're wearing in  
13 the store, Black Lives Matter, is the same message Black Lives  
14 Matter protestors are -- some of their signs are wearing,  
15 right? The Black Lives Matter protests have BLM, have Black  
16 Lives Matter signs outside the store, right? Same, same  
17 verbiage?

18 A. Same words, yes.

19 Q. Same words, right? And you're in -- working in a customer  
20 facing role in the store, right?

21 A. Yes. I interacted with customers.

22 Q. And now customers coming into the store all the time are  
23 seeing your, your necklace or your pin that's on your apron,  
24 right?

25 A. Yes.

1 Q. And how are they to know that the Black Lives Matter pin  
2 or the BLM message that you're wearing in the store has any  
3 different meaning than what they see on the protests outside  
4 the store or on the news.

5 MR. ZAFFARESE: Objection, Your Honor.

6 THE WITNESS: Because --

7 MR. ZAFFARESE: Objection. First the suggestion is that  
8 there is a different meaning. That there's a meaning outside  
9 the store that means police brutality; inside the store it  
10 means something else when the --

11 MR. FERRELL: Objection. Coaching the witness. I'd like  
12 the witness --

13 **(Simultaneous comments.)**

14 JUDGE SOTOLONGO: Please stop. If you want me to remove  
15 the witness to make your argument --

16 MR. ZAFFARESE: Yes.

17 JUDGE SOTOLONGO: Why don't you step out of the room for a  
18 second. We'll call you right back. Okay.

19 UNIDENTIFIED SPEAKER: If you'd close the door please.

20 THE WITNESS: Okay.

21 **(Witness leaves room.)**

22 JUDGE SOTOLONGO: All right. One at a time, please.

23 MR. ZAFFARESE: If I may. My client's testimony, which he  
24 was interrupted in the middle of stating, was that it's not  
25 only the context, but it means more than just police brutality.

1 JUDGE SOTOLONGO: Well, the one thing I'm going to say is  
2 that this witness cannot say what customers are thinking or  
3 whether they can make a distinction between what they see in  
4 the store. That's in a way -- it's argumentative. That's --

5 MR. FERRELL: It's not the question, Your Honor.

6 JUDGE SOTOLONGO: -- question the witness can answer.

7 MR. FERRELL: It's not the question, Your Honor. I asked  
8 whether it had a different meaning, and he says the context  
9 matters. And I asked him are customers coming in the store,  
10 they are a primary concern to Whole Foods. How are our  
11 customers to understand that there's a different meaning?

12 MR. ZAFFARESE: Again --

13 MR. FERRELL: No.

14 JUDGE SOTOLONGO: Again, that's something that the witness  
15 can answer.

16 MR. FERRELL: That's the point. If he has an answer that  
17 there's some context that the customers would understand has a  
18 different meaning, fine. If they don't, that's fine. That's  
19 the answer. I don't need counsel to try and coach his witness  
20 while he's on the stand.

21 MR. ZAFFARESE: Again, Your Honor, if that's what he wants  
22 to say, then he can make the argument -- he can make it in his  
23 closing. The point is he's asking this witness to boomerang  
24 his, his response back. That's inappropriate.

25 MR. FERRELL: It's not.



1 JUDGE SOTOLONGO: Well --

2 MR. FERRELL: I asked this witness is there some way that  
3 their customers would know that there's a different meaning  
4 perhaps in the store?

5 MR. ZAFFARESE: And, again, counsel presumes there is a  
6 different meaning, which I -- goes back to my earlier --

7 **(Simultaneous comments.)**

8 MR. FERRELL: It was the witness' answer.

9 JUDGE SOTOLONGO: This witness cannot answer that  
10 question, cannot answer what, what customers might see -- any  
11 difference the customers might see, if any.

12 MR. FERRELL: He can if he says, well, I told customers  
13 that there's some issue in the store.

14 JUDGE SOTOLONGO: -- ask that question but --

15 MR. FERRELL: I asked is there --

16 No. I don't know why I continue to be interrupted. But I  
17 asked is there some reason that they would understand that  
18 there's a different context in the store? And he's not being  
19 allowed to answer. It's a perfectly legitimate question.

20 JUDGE SOTOLONGO: Well, I will sustain the objection.

21 MR. ZAFFARESE: Thank you, Your Honor.

22 JUDGE SOTOLONGO: Please bring the witness back.

23 **(Witness reenters the room.)**

24 JUDGE SOTOLONGO: Proceed, Mr. Ferrell.

25 Q. BY MR. FERRELL: Mr. Read. Did you explain to customers

1 coming in the store about any different meaning that Black  
2 Lives Matter or BLM had in the store as opposed to what they  
3 might have seen outside of the store?

4 MR. ZAFFARESE: I'm going to object to the use of the term  
5 different. It goes back to my earlier objection. If he wants  
6 to ask the question what he thought it meant if he explains  
7 it's one thing, but saying different suggests something that's  
8 just not in evidence.

9 MR. FERRELL: It goes to the context. He said the meaning  
10 depended on context.

11 MR. ZAFFARESE: He was --

12 JUDGE SOTOLONGO: Again, the question assumes there is a  
13 difference that may or not be. Question -- I guess the proper  
14 question would be whether he, he explained whether the witness,  
15 Mr. Read, explained to any customers based on the customers  
16 questions or based on his own volition what he meant -- what  
17 his messaging meant. That's a proper question.

18 Q. BY MR. FERRELL: Mr. Read, will you answer the Judge's  
19 question?

20 A. I will. I did explain to many customers why I was wearing  
21 the pin over the necklace.

22 JUDGE SOTOLONGO: Was that as a, as a -- was that as a  
23 result of them asking a question as to why you were wearing the  
24 pin or -- the pin or the pendant?

25 THE WITNESS: Usually not. So there were many, many of

1 these conversations usually occurring with -- I'm not a  
2 confrontational person. So usually occurring initially -- I  
3 talked to customers a lot regularly. It's something I like  
4 about my job. Very often engaging -- have you tried these  
5 oranges? Let me help you find something, whatever. In those  
6 conversations then bringing up by the way the reason I'm  
7 wearing this, and explaining to them that generally that, you  
8 know, I -- explaining just so you know this is sort of an issue  
9 right now. You might see some of us wearing these. Whole  
10 Foods isn't happy about it. It's the first violation -- it's  
11 the first thing in the uniform policy that they really decided  
12 to crack down on. It's really not okay with that. Black  
13 women there told to take the mask off. We're wearing these in  
14 support. And a lot of times conversations -- surprise, Whole  
15 Foods, really? Like, it's surprising. I know, right? They  
16 put themselves across as very liberal, and we're just asking  
17 for the change in uniform policy --

18 JUDGE SOTOLONGO: So you're saying, Mr. Read, if I may  
19 interrupt.

20 THE WITNESS: Yes.

21 JUDGE SOTOLONGO: You're saying that you, you were not  
22 asked by customers why are you wearing the BLM or Black Lives  
23 Matter pin or pendant. That you initiated this conversation,  
24 and you said you may have -- in case you're asking yourself why  
25 we're wearing -- I'm wearing or we're wearing the things, and

1 here are my reasons or here are our reasons; is that what  
2 you're saying?

3 THE WITNESS: Most of the time I initiated the  
4 conversation about the, the necklace or the pin. Sometimes  
5 when it was in the necklace form, which did both the one that  
6 was the pin turned into a necklace or the necklace I made it  
7 myself, they looked a little bit funny. So there were times  
8 when I was asked what's up with that in so many words.

9 JUDGE SOTOLONGO: And these conversations occurred where  
10 in the store?

11 THE WITNESS: So I move all over the store. I, I -- on an  
12 eight-hour shift often put in 20,000 steps, if that means  
13 anything. So really all throughout the store. One of my  
14 duties as a cashier's assistant was to return go-backs. So  
15 lots of people at the checkout. Couple things that they  
16 decided they're not going to buy. Those items pile up, and it  
17 would be my job to take all those items returned. So I'm  
18 taking produce back to the produce department. I'm taking meat  
19 back to the meat department and so on. So I'm moving all over  
20 the store. And, again, one of the things I like about my job  
21 is interacting with people. So as I'm doing that all over the  
22 store, I'm having conversations.

23 JUDGE SOTOLONGO: All right, Mr. Ferrell, I'll let you ask  
24 the question. I don't think it's right for me to keep asking  
25 him questions. Only reason why I did that is so hopefully we

1 can avoid some objections. But go ahead.

2 Q. BY MR. FERRELL: Mr. Read, do you remember giving that  
3 Board affidavit we talked about earlier?

4 A. I do.

5 Q. In that Board affidavit you had -- I think you said it was  
6 a virtual interview with a Board investigator, right?

7 A. Yes. Probably just over the phone truthfully. It wasn't  
8 a Zoom thing. Just several phone calls.

9 Q. Phone calls. But you had the opportunity to tell the  
10 Board investigator any and everything you wanted that was  
11 relevant to your charge at the affidavit, right?

12 A. Yeah. I wish I had said more, but, yeah, I believe I  
13 could have said whatever.

14 Q. And you had, you had legal counsel with you at the time?

15 A. They were on the phone, yes.

16 Q. Mr. Read, I'm going to show you --

17 MR. FERRELL: Permission to approach.

18 JUDGE SOTOLONGO: Sure. You going to ask him to read --

19 MR. ZAFFARESE: -- please.

20 MR. FERRELL: His entire affidavit.

21 JUDGE SOTOLONGO: Okay. You going to ask him to read a  
22 certain portion?

23 MR. FERRELL: I would like Mr. Read to find the portion of  
24 his affidavit where he discussed the lengthy answer he just  
25 gave you, Your Honor.

1 JUDGE SOTOLONGO: All right. Well, I think there's a  
2 shorter way of doing that.

3 Do you recall first of all before you read your affidavit,  
4 and maybe you need to refresh your recollection, but before you  
5 do that -- do you recall stating in your -- stating anywhere in  
6 your affidavit that, that you have spoken to customers during  
7 this time period, and explained to them why you were wearing  
8 Black Lives Matter messaging?

9 THE WITNESS: I, I would like to review it.

10 JUDGE SOTOLONGO: Okay. You know what? Then go ahead.  
11 Let's go off the record. Let's take a few minutes. Go ahead.  
12 And after you, after you -- then you read it, then you can  
13 answer the question.

14 **(Off the record from 11:13 a.m. until 11:20 a.m.)**

15 JUDGE SOTOLONGO: All right, let's go back on the record.

16 All right, Mr. Read, have you had a chance to read and  
17 review your affidavit?

18 THE WITNESS: Yes, I have.

19 JUDGE SOTOLONGO: Okay. Go ahead, Mr. Ferrell.

20 MR. FERRELL: Thank you. I'd like to retrieve the  
21 affidavit. I'd like to retrieve the --

22 JUDGE SOTOLONGO: Yes.

23 MR. FERRELL: -- affidavit.

24 JUDGE SOTOLONGO: Yes.

25 Q. BY MR. FERRELL: Mr. Read, in reviewing your Board

1 affidavit, did you see anywhere in there where you talked about  
2 the discussions that you had with customers about why you're  
3 wearing BLM pins or necklaces in the store?

4 A. No, I did not see that in the affidavit.

5 Q. It's nowhere in your Board affidavit, right?

6 A. I just said yes, I agree, it's not in the affidavit.

7 Q. Now, there came a time when you stopped wearing the Black  
8 Lives Matter messaging at the store. I think you said earlier  
9 maybe it was sometime late July.

10 A. That's a good guess, yes. That's my guess.

11 Q. That's your best you can recall?

12 A. Late July, yeah, best I can recall.

13 Q. And there came a time when you were posting your thoughts  
14 on that Telegram, that team member group chat, about whether  
15 you should continue wearing the BLM messaging in the store,  
16 right?

17 A. Did I -- is the question did I post?

18 Q. Yes.

19 A. I can think of one post certainly. I don't remember the  
20 whole chat at all, but I do remember one post where I discussed  
21 some thinking through if I should continue wearing it or not.

22 MR. FERRELL: Permission to approach, Your Honor.

23 JUDGE SOTOLONGO: Please do.

24 Q. BY MR. FERRELL: Mr. Read, I've handed you what's been  
25 marked for identification as Respondent's Exhibit 57.

1   **(Respondent's Exhibit 57 marked for identification.)**

2   Q.   BY MR. FERRELL:  If you look on the 2nd page, and take a  
3   moment, familiarize yourself with the 2nd, 3rd, 4th, and 5th  
4   pages, I think you will confirm for me that this is a post that  
5   you authored on your chat; it's something you produced in  
6   response to the subpoena in this case with your counsel.

7   A.   Yes.  And just as far as the question on the subpoena, I  
8   just would like to clarify the reason -- what I gave you I was  
9   not at all trying to be selective.  My screenshots came from a  
10   time maybe more than a year before the subpoena when I was  
11   asked by my representative NLRB to collect screenshots that  
12   were -- that have -- that not all of them, but screenshots  
13   particularly where there was mention of issues of racism at  
14   Whole Foods.  I did my best to, to scan through and list, and  
15   screenshot some of them, and sent them off.  When the subpoena  
16   came, I don't know, two months ago or so -- I'm sorry, I don't  
17   know exactly -- at that point, I had no access to Telegram  
18   anymore.  So it's just like, well, you still have these  
19   screenshots I sent you over a year ago, and that's where this  
20   comes from.  So it wasn't exactly a response to the subpoena.

21   Q.   It was produced to us in response to the subpoena and --

22   A.   Okay.

23   Q.   -- and my only question for you right now, Mr. Read, is do  
24   you recognize the post as being posts that you made in the  
25   Telegram chat room?



1 A. Yes. I haven't looked at every page yet, but, yes, what I  
2 have looked at, yes.

3 Q. And if you look at the front page of the exhibit, this  
4 came as part of the subpoena production from one of the other  
5 Charging Parties, Kayleb Candrilli. Do you know Kayleb  
6 Candrilli?

7 A. I do.

8 Q. A team member, co-worker of yours at the South Street  
9 store in the summer of 2020?

10 A. That's correct.

11 Q. And if you look at the front page, I think you will  
12 confirm for me that the screenshot that Kayleb gave us is part  
13 of, but part of your same post in beginning at point number  
14 four?

15 A. Correct.

16 Q. And the reason we included it is in Kayleb's production  
17 there was still the date on there. Do you see, you see the  
18 date of July 5?

19 A. Oh, I do, yes.

20 Q. And do you see in the lower right-hand corner of that  
21 point number four of your post it says -- this on the first  
22 page, 11:53 a.m.? Do you see that?

23 A. I'm sorry. On the lower right-hand corner?

24 Q. Right on the same line where --

25 A. Oh, yes, yes.

1 JUDGE SOTOLONGO: Where do you see July? I see the 11:53  
2 a.m., but where is the July? Oh, I see, the very first line.

3 MR. FERRELL: The very first line.

4 JUDGE SOTOLONGO: Yeah. It's kind of, it's kind of above  
5 the -- the actual --

6 MR. FERRELL: They don't make it easy on us with old eyes,  
7 they don't.

8 JUDGE SOTOLONGO: I see. Okay. Very well. Okay.

9 Q. BY MR. FERRELL: So it's July 5, 11:53 a.m., Mr. Read.  
10 Would you agree?

11 A. I see that, yes.

12 Q. And if you're looking at the other pages of your post from  
13 your production -- so these are the color printed page, the two  
14 -- beginning on the second page and the rest of the pages. If  
15 you go to the final page of the exhibit in the lower right-hand  
16 corner, the end of your same post you see the same time stamp,  
17 right, 11:53 a.m.?

18 A. I do.

19 Q. So this is -- would you agree with me this is your post on  
20 the team member Telegram group chat from July 5 at 11:53 a.m.?

21 A. Yes.

22 Q. And in this group chat, you were discussing, you say I'm  
23 torn about whether or not I will wear a BLM pin next week. Do  
24 you see that?

25 A. Yes, at the top of the second page, I'm torn about whether

1 or not -- yes, I see that.

2 Q. And you were giving your co-workers -- it looks like there  
3 were 17 members signed up to the Telegram chat; is that right?

4 A. At this moment, yes. The number went up and down; but,  
5 yeah, at this moment I see that.

6 Q. And you were providing your team members with your  
7 thoughts about whether the group should continue or whether you  
8 would continue, right, wearing BLM pins?

9 A. Some of my thoughts, yes.

10 Q. And in point number one, you say I'm sure we all know we  
11 are not ending racism by wearing pins. You see that?

12 A. Um-hmm. Yeah. I'm sorry, yes.

13 Q. And the racism that you're talking -- the pins that you're  
14 talking about there are your Black Lives Matter pins that  
15 you're wearing on your apron, right?

16 A. Yes.

17 Q. And ending racism there you're referring to general  
18 societal cultural racism in America; is that fair to say?

19 A. No. I wouldn't say that's fair to say.

20 Q. What racism were you referring to by ending racism?

21 A. So all of this I'm talking about Whole Foods. So I would  
22 think I'm talking about Whole Foods at racism -- racism at  
23 Whole Foods.

24 Q. So your testimony is you were talking here about racism at  
25 Whole Foods even though it just says racism?

1 A. I certainly see your point. I would say I have a hard  
2 time posting to these things. I get very nervous, and this was  
3 -- this definitely was a lot more than I normally say. And, I  
4 mean, certainly in my mind all this was in the context of Whole  
5 Foods when I wrote it. But as I've mentioned, there are  
6 overlapping issues between the global Black Lives Matter  
7 movement and then racism within Whole Foods. So I believe  
8 those nuances were made.

9 Q. You say in the second sentence still our personal reasons  
10 for wearing the pins are valid. You see that?

11 A. I do.

12 Q. Now your own personal reasons included standing up for  
13 your wife, who is African-American, and your biracial kids;  
14 isn't that right?

15 A. Was one of many, but I think what I'm trying to say there  
16 is, again, I think I mentioned in here that like consensus is  
17 hard to come by, and that truly the word -- like some people  
18 were more concerned about issues between Joe and offering  
19 products to the police officers. I was more motivated by other  
20 issues. So there was, there were, there were many different  
21 people wearing pins, and I think I'm acknowledging we're not  
22 all necessarily wearing them for the exact same reasons. We've  
23 had lots of conversations, and there's overlapping reasons, but  
24 I believe when I say personal reasons I think I'm trying to  
25 acknowledge that I can't speak for all of you.

1 Q. But among your personal reasons was your family?

2 A. Among them, yes.

3 Q. You go on the next sentence say WF, that stand for Whole  
4 Foods?

5 A. Yes.

6 Q. Whole Foods has created a new reason though. And then you  
7 say, I feel it is our responsibility to force Whole Foods to  
8 choose a side. Whole Foods has to acknowledge that they have a  
9 choice between embracing BLM or white supremacy. They don't  
10 get to avoid that choice. Mr. Read, is it your view that  
11 anyone not embracing, supporting Black Lives Matter movement is  
12 embracing or supporting white supremacy?

13 A. If you understand my definition of white supremacy, yes.  
14 Although that is, that is an expression I'm sure there are many  
15 different understandings of. I could explain my understanding  
16 of white supremacy.

17 Q. And do I understand correctly the position you're  
18 expressing here to be that you believe you have -- and the team  
19 members have a statutorily protected right to force Whole Foods  
20 to take a position on a social or human rights issue?

21 A. No, I wouldn't say that.

22 Q. But you say they don't get to avoid the choice.

23 A. I believe -- I do say that, but I, I don't think that  
24 means that I knew they -- I think I more was saying we should  
25 not let them avoid making that choice by asking people to, you

1 know, put up signs that say, you know, at the time there's lots  
2 of things being discussed. People would know what I'm  
3 referring to. Like they're trying to say if you put up a sign  
4 that says hate has no place here or we're trying to put up a  
5 sign that says -- I don't remember what they were, but they  
6 didn't say Black Lives Matter. For me, I was working in  
7 solidarity with black co-workers, team members that wanted to  
8 wear something that says Black Lives Matter. As a white man, I  
9 consider my job to be supportive, and be following their lead.  
10 Never in this point -- never at any point wanted to consider  
11 myself a leader, decision maker -- talking through stuff. But  
12 so I think I'm referring to, yeah, if they want to avoid  
13 allowing us to wear Black Lives Matter by saying we'll let us  
14 put a sign that says hate has no place here, and that was not  
15 acceptable to me.

16 Q. Well, they were prohibiting you from wearing your Black  
17 Lives Matter pin under the uniform policy, right, the dress  
18 code?

19 A. The reason stated was always that it's a violation of the  
20 uniform policy.

21 MR. FERRELL: Your Honor, move to admit Respondent's  
22 Exhibit 57 into evidence.

23 JUDGE SOTOLONGO: Any objections?

24 MR. PETERSON: So, Your Honor, it is with some reluctance  
25 that I make the objection because, again, Respondent is cherry

1 picking messages from, from a very long Telegram chat that is  
2 of marginal relevance. Rule 106 of the Federal Rules of  
3 Evidence requires that when a part of a writing is offered the  
4 adverse party may require the introduction at that time of any  
5 other part or any other writing or recorded statement that in  
6 fairness ought to be considered. And so, yeah, that's what  
7 I'm, that's what I'm -- that's, that's my objection, and that's  
8 what I'm requesting that the entire Telegram chat be produced  
9 if this is going to be produced. Otherwise, I object to its --

10 MR. FERRELL: It's not a produced issue. It's an  
11 introduced issue. The produced issue --

12 MR. PETERSON: I, I --

13 MR. FERRELL: -- deals with the subpoena and where we got  
14 partial production and --

15 MR. PETERSON: If it's received --

16 MR. FERRELL: -- issue.

17 MR. PETERSON: -- I should have said --

18 JUDGE SOTOLONGO: All right, all right.

19 MR. FERRELL: But what we are offering is the relevant  
20 portions.

21 JUDGE SOTOLONGO: I don't want to hear any more. I'm  
22 going to admit it.

23 **(Respondent Exhibit 57 received in evidence.)**

24 JUDGE SOTOLONGO: And Mr. Peterson, you think there's  
25 other evidence that you think you've got to introduce to rebut

1 this because obviously the opinions of others who may not be  
2 part of this case may not matter. What we're dealing here is  
3 the motivations and opinions and purposes behind those who were  
4 allegedly engaged in particular activity. And I have included,  
5 if I recall correctly, I've included chats that reflect the  
6 views of persons who are not party to this case, and -- my  
7 ruling. Now, if you have other, other evidence from other  
8 charging parties or witnesses that somehow would, you believe,  
9 aid your case, and General Counsel's theory of the case, I  
10 certainly welcome to take a look at it, and then I'll admit it  
11 or reject it depending on what it is.

12 MR. FERRELL: And, Your Honor, just wanted to make sure  
13 we're clear. Respondent's 57 was authored by the witness, the  
14 Charging Party.

15 JUDGE SOTOLONGO: Right.

16 MR. FERRELL: And to counsel's point, I've only asked  
17 questions about the first page because that's the portion I was  
18 interested in to ask the witness about. I included all the  
19 pages for completeness. So I take umbrage at any suggestion  
20 that I'm cherry picking. I gave the entire post, and all these  
21 other pages were just for completeness to avoid this allegation  
22 or issue.

23 MR. PETERSON: As the witness has testified, there's a lot  
24 of context. Rule 106 says that it should be produced at the  
25 time. If Your Honor is going to give me time in the interim to



1 produce --

2 JUDGE SOTOLONGO: Well, that's going to be produced by  
3 -- introduced by a witness, right?

4 MR. PETERSON: It ought to be produced by, by Respondent  
5 right now. He's offering a portion of the --

6 MR. FERRELL: This is insanity. This is --

7 JUDGE SOTOLONGO: No, no. I, I disagree with that point  
8 of view. That's what you do in litigation -- about cherry  
9 picking. You present your case, and the other side is there to  
10 present their case and to rebut the other side. And neither  
11 you nor Respondent nor the Charging Party has any obligation to  
12 put in evidence that assists the other side.

13 MR. PETERSON: The language -- just so -- the language of  
14 Rule 106 states if a party introduces all or part of a writing  
15 or recorded statement, an adverse party may require the  
16 introduction at that time of any other part or any other  
17 writing or recorded statement that in fairness ought to be  
18 considered at the same time.

19 JUDGE SOTOLONGO: That's my --

20 MR. PETERSON: So that's why I'm asking you, Your Honor,  
21 if it doesn't happen now, if you will -- I mean, I guess, you  
22 know, obviously we need a witness to put it on, but my reading  
23 of that rule is that, that Respondent should be producing the  
24 --

25 MR. FERRELL: The reading of the rule is entirely

1 incorrect. It says one in fairness. And there's been no  
2 foundation that I've provided and included an incomplete post  
3 by Mr. Read in this case. I mean, if he wants to lay some  
4 foundation that there's some incompleteness -- the reason I  
5 included all of it was for completeness. There's no foundation  
6 that it was -- I came in mid-comment, gave part of the post --

7 JUDGE SOTOLONGO: I think it was a misreading of Rule 106.  
8 I don't think Rule 106 requires a party to produce other  
9 evidence not that is not part of the -- or the particular  
10 posting or the particular piece of evidence they're introducing  
11 that rebuts that. That's the whole idea behind the system is  
12 to have a counterbalance where the other side can then rebut or  
13 present other evidence in support of their case. This is not  
14 the case where the prosecution is hiding evidence, for example,  
15 of innocence from, from the defense. That's not what we're  
16 dealing here with. So you're certainly welcome to introduce  
17 any evidence that you think supports your case or rebuts what  
18 the evidence that Respondent has introduced here.

19 MR. PETERSON: If the understanding is it's post -- by  
20 post rather than the entire Telegram chat --

21 JUDGE SOTOLONGO: It is.

22 MR. PETERSON: -- I understand.

23 JUDGE SOTOLONGO: Some of those posts may not be relevant.

24 MR. PETERSON: Many of them aren't.

25 JUDGE SOTOLONGO: And it is the duty, it is the duty and

1 part of the, you know, is what attorneys do. They go in, and  
2 they find -- let me say this. This is -- perhaps I shouldn't  
3 say this, but one thing I've been noticing in litigation lately  
4 is that parties and both General Counsel they'll subpoena  
5 truckloads of documents, and then they put it on my counter and  
6 say I move to -- both parties move to admit this. That's not  
7 the way you litigate. You cherry pick. You pick those items  
8 in the thousand documents that help your case, and look the  
9 other way when there's something that doesn't, doesn't help.  
10 And it's the duty of the other side then to put the evidence in  
11 that helps their case and contradicts their opponent's case.  
12 You don't -- otherwise why are we having hearings? Let's just  
13 send the box into the judge and say -- and make your arguments.  
14 You pick, and, you know, happens for example I've see this one.  
15 General Counsel has subpoenaed evidence, what I call document  
16 dumps. They subpoena thousands of records from, from the  
17 Respondent, and they essentially dump it on the trial judge,  
18 and say we don't know exactly where in here it's located.  
19 We'll argue it in our brief. No. You pick those parts of the  
20 evidence that helps your case, and hope that the other side  
21 doesn't notice the parts that helps their case. And that's the  
22 way the system works.

23           So -- Mr. Peterson, if you have evidence of postings  
24 that can be authenticated by your own witnesses that you think  
25 supports your theory of the case, certainly you're welcome to

1 try and introduce it. I'll make a judgment at the time. And  
2 if I agree with you that, that the portions are relevant, and  
3 can be properly authenticated by your witnesses, then by all  
4 means I'll allow it. What I have looked -- what I have kept  
5 out in this, in this case has been comments by either the third  
6 parties who are not party to this case or the general public  
7 whose views cannot be taken into account in this matter.  
8 Because it's the views of those who participated in this  
9 movement or in this whatever you want to call it protest or  
10 activity, considered activity that is at issue in this case.

11 Now, so I don't want, I don't want to elaborate any  
12 further. I've taken already enough time on the record to  
13 address it. So I'm admitting Respondent's 57, and let's  
14 proceed.

15 MR. ZAFFARESE: Your Honor, before we proceed,  
16 Mr. Ritterman is now here to replace me. Court's permission  
17 may I be excused?

18 JUDGE SOTOLONGO: Certainly. So let's just for the --  
19 okay, for the record, Mr. Zaffarese -- a party, and Mr.  
20 Ritterman is coming in from the bullpen.

21 MR. RITTERMAN: Good morning, Your Honor.

22 **(Simultaneous comments.)**

23 JUDGE SOTOLONGO: All right. Thank you. All right.  
24 Please proceed, Mr. Ferrell.

25 Q. BY MR. FERRELL: Mr. Read, we were just looking at

1 Respondent's Exhibit 57 --

2 MR. FERRELL: Which I believe, Your Honor, is in evidence  
3 now.

4 JUDGE SOTOLONGO: Yes, it is.

5 MR. FERRELL: Just want to make sure.

6 THE WITNESS: That's this one? The one --

7 Q. BY MR. FERRELL: Yes, 57, correct, the one before you.  
8 And we talked about the date of your -- that you authored that  
9 post, that you sent it in the chat was July 5. A little less  
10 than a week later, you were actively working with the NLRB  
11 about filing your charge that we're here about today.

12 A. I, I don't know the exact date that I started working with  
13 the NLRB, but that seems plausible.

14 MR. FERRELL: Permission to approach.

15 JUDGE SOTOLONGO: Go ahead. 58?

16 MR. FERRELL: Yes, Respondent's Exhibit 58, Your Honor.

17 **(Respondent Exhibit 58 marked for identification.)**

18 Q. BY MR. FERRELL: Mr. Read, you have before you what's been  
19 marked for identification as Respondent's Exhibit 58. This was  
20 part of the production we received in response to your trial  
21 subpoena. It's a text message to you from somebody whose name  
22 has been redacted as Employee A to protect the non-charging  
23 party names. Okay. This is from -- you see where it says  
24 July 11, 7:18 p.m.?

25 A. I see that.

1 Q. That's the time you sent this text message to Employee A,  
2 right?

3 A. Correct.

4 Q. And say, hey, this is Truman, that's you, right?

5 A. Yep. Yes, that's me.

6 Q. And you talk about in the third sentence, I wanted to let  
7 you know that some of us are filing complaints with the  
8 National Labor Relations Board because WFM -- that's Whole  
9 Foods Market, right?

10 A. Yes, that's Whole Foods Market.

11 Q. Because Whole Foods Market won't let us support BLM at  
12 work, right?

13 A. I see that.

14 Q. That's the reason you filed the charge?

15 A. Well, in solidarity with black team members that wanted to  
16 wear Black Lives Matter things, and were told they couldn't,  
17 and that was the first thing that -- of the uniform policy that  
18 they were enforcing, yeah. That was the initial reason.

19 Q. Just -- my question to you, Mr. Read, you filed the charge  
20 we're about here today because Whole Foods Market won't let us  
21 support Black Lives Matter at work.

22 MR. PETERSON: Objection, asked and answered.

23 THE WITNESS: In the text I'm not going to say all the  
24 things I just said to you in a text message to a, to a team  
25 member. But certainly -- I just said.

1 Q. BY MR. FERRELL: Well, in the text message what you said  
2 on July 11, 2020, was because Whole Foods Market won't let us  
3 support Black Lives Matter at work, right?

4 MR. PETERSON: Asked and answered.

5 JUDGE SOTOLONGO: Well, excuse me, but the person who  
6 wrote this is --

7 MR. FERRELL: Mr. Read.

8 JUDGE SOTOLONGO: Mr. Read. All right. So this is -- so  
9 you -- excuse me. I got it confused. So you wrote -- you're  
10 the author of this message?

11 THE WITNESS: I am.

12 JUDGE SOTOLONGO: Okay, all right. Please proceed.  
13 Sorry. Go ahead.

14 MR. PETERSON: I guess he's asked him three times if, if  
15 that's what it says.

16 JUDGE SOTOLONGO: Right. Well, he answered. Maybe it  
17 wasn't satisfactory, but he answered. He said -- his answer  
18 was he had no motivations besides the one that he spelled here.

19 Q. BY MR. FERRELL: But you only identified one motivation on  
20 July 11, 2020, right?

21 MR. PETERSON: Asked and answered.

22 JUDGE SOTOLONGO: Overruled. He can answer that.

23 THE WITNESS: Yeah. Because I don't text the same way  
24 that I speak to people. Texts are abbreviations. So, yes, the  
25 abbreviation text message form that is what I said.

1 Q. BY MR. FERRELL: And the support that you wanted Whole  
2 Foods to allow you and the other team members to show to the  
3 Black Lives Matter movement was to wear Black Lives Matter pins  
4 or facemasks or messaging while you were working in the store,  
5 right?

6 A. I'm sorry. Can you repeat the question?

7 Q. What you wanted to happen, what you were trying to achieve  
8 was to have Whole Foods allow you to wear the Black Lives  
9 Matter messaging, pin, facemask, necklace, whatever, while you  
10 were working in the store, right?

11 A. Yes.

12 Q. To change the dress code or the interpretation of the  
13 dress code to allow that to happen; that's what you were  
14 asking?

15 A. Yes. That was the first, yes.

16 MR. FERRELL: No further questions.

17 JUDGE SOTOLONGO: You move for the admission of 58?

18 MR. FERRELL: I do, Your Honor. Thank you.

19 JUDGE SOTOLONGO: All right. Any objection?

20 MR. PETERSON: No objection.

21 May I redirect, Your Honor? Oh, I'm sorry.

22 JUDGE SOTOLONGO: Yeah, no, just talking about admission  
23 of 58. So 58 is admitted.

24 **(Respondent Exhibit 58 received in evidence.)**

25 JUDGE SOTOLONGO: And you can -- yes -- Mr. Peterson will



1 go first redirect, and then you'll have a chance to redirect.

2 MR. RITTERMAN: Very good. Thank you.

3 JUDGE SOTOLONGO: So, Mr. Peterson.

4 MR. PETERSON: Your Honor, can I have 10, 15 minutes to --

5 JUDGE SOTOLONGO: Sure. Okay. So it is, it is 12 -- 12  
6 minutes or 13 minutes to 12. We'll resume at noon. How's  
7 that?

8 MR. PETERSON: Thank you.

9 **(Off the record from 11:47 a.m. until 11:58 a.m.)**

10 **JUDGE SOTOLONGO: Let's go back on the record.**

11 Mr. Peterson, the ball's in your court.

12 MR. PETERSON: Thank you.

13 **REDIRECT EXAMINATION**

14 Q. BY MR. PETERSON: Hello again, Mr. Read.

15 A. Hello.

16 Q. A few follow-up questions for you. One, the Respondent's  
17 counsel was asking you about the various -- your understanding  
18 of the uniform and the rules about the uniform. Do you recall  
19 that testimony?

20 A. Yes.

21 Q. And one of those things you mentioned was no holes in  
22 clothes was a rule?

23 A. Correct.

24 Q. Do you know -- did you have any observations of how that  
25 rule was enforced?

1 A. It was something that came up in conversation. I'm not  
2 sure I observed it myself until it came up in conversation.  
3 Around this time in late June early July I was in lots of  
4 conversations with team members about their impressions of  
5 conditions at Whole Foods; whether or not there were issues of  
6 racism people were noticing. And in some of those  
7 conversations it came up that some people that felt  
8 comfortable. We noticed many people have holes in their  
9 clothes; sometimes for style, sometimes because the jeans were  
10 worn out. I was told by two different black team members that  
11 they were not comfortable wearing clothes with holes in them.

12 Q. Did they tell you why -- did they indicate why they were  
13 uncomfortable?

14 A. I believe it was understood. I do not remember them  
15 explicitly saying exactly why. My understanding was they felt  
16 they needed to follow the rules more closely.

17 Q. And Whole Foods counsel asked you about the conversation  
18 you had with Valerie Johnson around July 9th, and you  
19 acknowledged that one of the, one of the reasons was that --  
20 about why you were wearing the Black Lives Matter pin, and you  
21 said that one of the reasons was the need to defend your  
22 family. Do you recall that testimony?

23 A. I recall that testimony.

24 Q. Do you recall any other reasons that you discussed with  
25 Ms. Johnson?

1 A. Yes. As I've said before, had many, many conversations  
2 with Valerie Johnson any time we were at the store at the same  
3 time. It's safe to say we would at some point find 5 or 10  
4 minutes to find 5 to 10 minutes to talk. Because I believe we  
5 had a very good relationship. And I was one of the employees  
6 that's a little bit older that I think she respected, and, and  
7 knew we could have a good conversation. In full disclosure, I  
8 know a lot of these conversations blend together. So when it's  
9 an entire dialog, it's very hard for me. But remembering  
10 certain catch phrases, yes. I do remember telling -- I don't  
11 know what date it was, but I do remember telling Valerie that -  
12 -

13 MR. FERRELL: Objection. Objection, foundation as to when  
14 we're talking about. I think we went through this yesterday.

15 JUDGE SOTOLONGO: Well, yeah, but the witness is -- again,  
16 the witness is testifying that he can't pinpoint a date because  
17 he had a number of conversations which he said sort of tend to  
18 all blend in. He can't pinpoint a date of any, of any  
19 conversations; is that correct?

20 THE WITNESS: That's correct, including --

21 JUDGE SOTOLONGO: All right. But this -- would it be fair  
22 to say this happened in the summer of 2020 when this issue was  
23 going on about the wearing of Black Lives Matter buttons or  
24 pins or -- is that, is that correct or is this happening months  
25 before or months after?

1 THE WITNESS: That would be correct.

2 JUDGE SOTOLONGO: So it happened in the summer of 2020?

3 THE WITNESS: Correct.

4 JUDGE SOTOLONGO: All right. So that's -- as close as you  
5 can pin it down?

6 THE WITNESS: Yes. I'm sorry, but it is as close as I  
7 can.

8 JUDGE SOTOLONGO: So that's the best we have to do, and  
9 this has to do with how much weight I give it. So go ahead.

10 THE WITNESS: So, yeah, so I do remember like, again, you  
11 know, certain catch phrases, certain important lines stand out  
12 in memory. I do remember telling her, I think what Valerie  
13 wants to refer to, I remember telling her that, like, I feel  
14 like I need to step it up. I need to step up my activism, and  
15 that my responsibility to my wife tells me I need to step up my  
16 activism. I remember saying something to her along those  
17 lines, which is I believe what was referred to earlier in  
18 testimony. I remember saying to her, you know, we talked about  
19 these things before. And that being in reference to a  
20 conversation about her knowing she needs to navigate the  
21 workspace differently as a black woman, and conversations we  
22 had about her knowing, you know, if Megan -- goes into Joe's  
23 office and says I need this, there's no problem. If I go in,  
24 and I say I need this --

25 MR. FERRELL: Objection for clarification. Is he

1     testifying about an actual conversation or is he just --

2             THE WITNESS:  -- sorry for interrupting.  My fault.

3             MR. FERRELL:  It just wasn't clear to me, Judge.

4             JUDGE SOTOLONGO:  It's okay.  Is this something that  
5     Ms. Johnson said to you?

6             THE WITNESS:  Yeah, back and forth.  So, sorry, me saying  
7     to her in the summer of 2020 in June or July that you know  
8     we've talked about these things in reference to racism at Whole  
9     Foods.  That I know she understood that we were talking about  
10    the conversation where I remember her saying to me, and this is  
11    one of the things I remember reasonably close dialog, her  
12    saying to me I have to navigate the workspace differently as a  
13    black woman.  If I make demands in the same way that a white  
14    woman does, I immediately get feedback I'm being too  
15    aggressive.  And that's something we discussed many times.  
16    Many -- multiple times.  So I do remember having a conversation  
17    in the summer of 2020 explaining to her some of my reasons for  
18    wearing the pin that -- explaining to her my evolving  
19    understanding of NLRB's involvement, and explaining racism at  
20    Whole Foods is also an issue, and you know we talked about  
21    these things.  I know there was many more conversations, but  
22    that's one of those just like sentences that I remember that I  
23    feel I can say was accurate and reasonably close to the actual  
24    dialog.  I am still thinking.

25            JUDGE SOTOLONGO:  Well, there wasn't a question.

1 MR. FERRELL: I'm not sure there's a question pending.

2 JUDGE SOTOLONGO: Yeah, okay. You wait for the next  
3 question then.

4 THE WITNESS: Okay. Sorry.

5 Q. BY MR. PETERSON: Are you thinking of more topics that you  
6 --

7 A. I was trying to --

8 Q. -- discussed?

9 A. -- because there's so many conversations with Valerie, I  
10 was trying to think of other examples that I can reasonably --  
11 within reason reiterate. I know we discussed --

12 MR. FERRELL: I'm sorry. I don't think there's a question  
13 pending.

14 Q. BY MR. PETERSON: Is there more you wanted to add?

15 MR. FERRELL: Objection, vague.

16 JUDGE SOTOLONGO: That's not a proper question.

17 Q. BY MR. PETERSON: Have you finished --

18 JUDGE SOTOLONGO: I'll sustain.

19 Q. BY MR. PETERSON: -- answering?

20 A. I had not finished answering when I said I'm still  
21 thinking. I would like time to think of other examples of  
22 conversations.

23 JUDGE SOTOLONGO: Well, I don't want narrative. You ask  
24 specific questions, hopefully without being leading,  
25 Mr. Peterson, and then you have the witness answer. Don't ask

1 questions that call for a narrative. That's simply not  
2 permitted, permissible, unless for some reason the -- it  
3 requires a long explanation.

4 MR. PETERSON: Yeah, that's --

5 Q. BY MR. PETERSON: Any other topics you recall addressing  
6 regarding racism with Valerie Johnson around June and July of  
7 2020?

8 A. Yes. I remember having a discussion about --

9 MR. FERRELL: I'm going to object, relevance unless the  
10 question is going to be limited to in Black Lives Matter  
11 messaging because that's the issue in litigation.

12 MR. PETERSON: Yeah, and that's fair.

13 Q. BY MR. PETERSON: And I'll say in the context if you  
14 remember after you had -- after you or others had started  
15 wearing the Black Lives Matter messaging.

16 A. Yes. In the context of discussing why we were still  
17 wearing, wearing pins or, or necklaces, I remember discussing  
18 with Valerie sort of the evolving meaning, and that is really  
19 bad look on Whole Foods -- decides to enforce this aspect of  
20 the uniform policy, and then that there's a lot of -- as soon  
21 as you start looking you see a lot of issues. I remember  
22 specifically talking to her about lack of black people in  
23 higher positions; and her commenting on look around the store  
24 at the lower levels you see a lot of diversity. As you move  
25 up, you see less. That conversation certainly happened in the

1 context of me wearing a necklace or a pin at the time in June,  
2 July 2020.

3 Q. Any other topics regarding racial issues at Whole Foods  
4 that you recall discussing with Valerie Johnson at the time  
5 people were wearing Black Lives Matter messaging?

6 A. I don't think so.

7 Q. Thank you. There's a -- you were asked a fair amount of  
8 questions about the Black Lives Matter, the protests outside  
9 of, outside of Whole Foods, and you were asked about a lot of  
10 messages on signs. What is your understanding of, of the  
11 message of the Black Lives Matter message generally?

12 A. I always think it's an important distinction to make that  
13 Black Lives Matter does not -- the, the, to, to espouse Black  
14 Lives Matter is not to demand to not be murdered by police.  
15 That is a given. The expression of Black Lives Matter means  
16 improving society in a way where black people are 100 percent  
17 free to be their true selves in the way that -- in all the same  
18 ways that white people in this culture are free to be their  
19 true selves. Obviously, there are limits upon all of us. But  
20 Black Lives Matter means we all need to put in the work so that  
21 we root out the most -- we root out all forms of white  
22 supremacy, which comes down to the microaggressions that my  
23 understanding of still evolves to today; that I sometimes am  
24 guilty of myself. So I'm working very hard. So Black Lives  
25 Matter is not about -- Black Lives Matter is about rooting out



1 every single forum for white supremacy down to the smallest  
2 microaggressions. And then, of course, coming with that you  
3 will not see incidents like, you know, them being murdered in  
4 the street, you know, slowly choked to death.

5 Q. Do you have any understanding of a connection with  
6 employment?

7 A. Yes. There's always a connection between civil rights and  
8 workers' rights. As always the -- is one of the things to  
9 study. So I, I see a direct connection.

10 Q. Do you have Respondent's 56 up there?

11 A. Which one is that? All right, so, yeah, the one with  
12 Triple Bagged --

13 Q. Yes.

14 A. Yes.

15 Q. And is it -- and, and what was this Triple Bagged? What  
16 was Triple Bagged relaying here? This is -- do you remember  
17 what he was or she was or they were relaying?

18 A. Only, you know, I was refreshed reading this. It's not a  
19 post that I think I would have remembered outside of seeing it  
20 in print again. I know I produced it, but over a year ago. So  
21 I can speak to what -- when I read this, what does it mean to  
22 me?

23 Q. Yeah, I, yeah. So just asking you to -- if you remembered  
24 the testimony about it, and I have --

25 A. Oh --

1 Q. -- questions about it.

2 A. I remember the testimony about it.

3 Q. Yeah. In the bottom paragraph it talks about it mentions  
4 that we also briefly touched on the gate-keeping that has been  
5 taking place in regards to in-house promotions, and people that  
6 wish to expand their career. See that? Do you know? Do you  
7 know what that's referring to?

8 A. Yeah. I was not at that conversation that they are  
9 referring to, but I do know that was something discussed often,  
10 and that also refers to gate-keeping meaning decisions on who  
11 gets promotions, and that there certainly was an impression  
12 that white men were being promoted more than anyone else. A  
13 lot of that conversation about Joe sort of the impression was  
14 he's a nice guy, but for him to be the leader of the store is a  
15 glaring example of white men -- upwards. He expired confidence  
16 in no one. He had an enormous salary. Seemed very --. And  
17 then brought up other team leaders seeing people of color  
18 underrepresented. That's what I think it's about.

19 Q. That's based on discussions that you had with your co-  
20 workers?

21 A. Yes. That was the topic that came up a lot.

22 Q. And Respondent's 57, do you have that? In the bullet  
23 point one, I think you were explaining, as I recall your  
24 testimony, you were explaining about ending racism. You were  
25 referring to your store specifically?

1 A. Yes.

2 Q. What racism in Whole Foods were you referring to?

3 A. The most obvious ones that we discussed the most amongst  
4 team members would have been who gets promoted, enforcement of  
5 rules. In doing my own research came up with multiple examples  
6 of in unequal enforcement of different rules besides the  
7 uniform. And then other forms of microaggressions that are  
8 very common in all workplaces that had come up in my  
9 conversations that I would have relayed to the members of this  
10 chat already.

11 Q. When you say conversations, conversations with whom?

12 A. With many of the team members, both black and white, and  
13 other races.

14 Q. You said you were doing research, when you researched the  
15 issue. What do you mean by -- how did you conduct the  
16 research?

17 A. Yeah. As I referred to in one of the other points on here  
18 that I was -- I didn't know who everyone in the chat was, but  
19 many of us I suspected were not black people. And as I said  
20 before -- for white people -- be active and be supportive in  
21 these issues, but I wanted to make certain the work I was doing  
22 was in the interest of my black team members. My initial  
23 reason for wearing a pin was in solidarity with black team  
24 members that had been told to take off their Black Lives Matter  
25 masks, and were very upset by that, especially in light of the

1 uniform policy usually not being enforced. So I did certainly  
2 make a point of talking to lots of team members. This is what  
3 I'm doing. How's that sound to you? Do you want me to stop?  
4 Are you interested in helping? Making it clear I'm a point of  
5 privilege. I'm in a position of privilege where, like, I'm  
6 willing to do this, and not worry about losing my job. So I  
7 want to take on the lead, but please don't think I think I'm  
8 some white savior. I just am willing to do a lot of work here.  
9 How's that sound? I got a lot of positive feedback; a lot of  
10 people saying, like, oh, yeah, man, and giving me examples,  
11 some of which I think are in text messages. Others came up  
12 from my affidavit. But that's the research I'm referring to.  
13 I had many conversations around this time where I was trying to  
14 gather information, like, my impression of racism is an issue  
15 here, but tell me your impression. And people were  
16 forthcoming.

17 Q. And without looking, without looking at the, the Telegram  
18 chat or your affidavit, what do you -- do you recall any of  
19 those issues that your co-workers brought up?

20 A. I do. So unequal enforcement of rules. Again, a friend  
21 of mine, co-worker --

22 MR. FERRELL: Objection about relevancy. The issue is the  
23 displaying of Black Lives Matter messaging. This is not the  
24 Title VII litigation.

25 MR. PETERSON: Yes. So Respondent's counsel asked

1 questions about what his motivations were, and this is going to  
2 his motivations, and his efforts to learn more about the racial  
3 issues that were going on at Whole Foods. I acknowledge it is  
4 not a Title VII issue, but I believe some of Respondent's  
5 questions opened the door, and I think --

6 JUDGE SOTOLONGO: It has --

7 MR. PETERSON: -- to me to explain --

8 JUDGE SOTOLONGO: Okay. What I'm trying to say is there  
9 has to be a nexus to the activities of the issue here. If he  
10 had a conversation a year before with a supervisor among  
11 employees about how they thought the Whole Foods is unfair to  
12 black -- to African-Americans for example, you know, a year  
13 before these events, where's the nexus? General conversations  
14 that happen at any point in time -- what matters is what  
15 happened -- what was happening in the summer of 2020 when these  
16 -- when this activity was taking place. Is there a nexus  
17 between the wearing of those -- of the messaging to general  
18 conversations that they could have had at some point of time?  
19 And we need some specifics. We cannot speak in general terms.  
20 So --

21 MR. PETERSON: Yeah, I'll ask for some more, some more  
22 foundation, but a lot of the connection here is, like, he's  
23 testified that when he says ending racism and ending white  
24 supremacy that he was referring to racism and white supremacy  
25 at Whole Foods, which, which came out on cross-examination, and

1 so the nexus is exploring his, his basis for --

2 JUDGE SOTOLONGO: Well, then be specific about it. At  
3 what point in time did he, did he talk about this in connection  
4 with the BLM messaging. I mean --

5 MR. PETERSON: Right. He testified that he, after  
6 learning what the Whole Foods was doing, he said he started  
7 doing research. So I'll ask another follow-up question, but I  
8 thought that he had made it clear that the research was in  
9 connection with this, this timeframe.

10 JUDGE SOTOLONGO: Well, then it's not -- nexus because I'm  
11 -- we're speaking in basically very broad generalities here.  
12 The problem is that, okay, the Respondent has introduced  
13 evidence of some of these chat rooms, Telegram platform or  
14 Instagram whatever that -- that has revealed at least some of  
15 the motivation intent was behind your wording of these  
16 messaging. And so if you can tie it to your side, I want to  
17 hear the nexus, but not generally. I mean, this sort of broad  
18 general, you know, I was concerned about racism, okay, but how  
19 does that connect? You follow me?

20 MR. PETERSON: Well, yeah. I mean, I think it's -- he's  
21 clear that he's brought up racism, and he's testified about  
22 what he, what he's communicated to the employer, and Respondent  
23 has brought out comments that he's made to his co-workers about  
24 racism, and that's --

25 JUDGE SOTOLONGO: Yeah. We want to hear specifics.

1 MR. PETERSON: Yeah.

2 Q. BY MR. PETERSON: So when -- the research you referred to,  
3 when did you begin engaging in that research as you described  
4 it?

5 A. Pretty much immediately after hearing that Chris had been  
6 told to take her mask off, and Alexis had been sent home for  
7 wearing a mask, Black Lives Matter mask to be specific. Pretty  
8 much immediately after that I started conducting research into  
9 what was -- and --

10 Q. And what was your method of conducting research?

11 MR. FERRELL: I'm going to object, Judge, then on  
12 relevance ground. If it's after Chris, the team where he  
13 testified was told to take the mask off, and after Alexis was  
14 sent home for wearing a Black Lives Matter mask, then that was  
15 I gather Mr. Read's motivation, but the issue at issue in the  
16 litigation is, is Whole Foods telling them to take it off,  
17 which is on June 19th. Now he's talking about what research he  
18 did after the fact, some of it based on the text messages we  
19 already introduced, at the direction of the NLRB or their legal  
20 counsel to go find what you can in support of the charge. But  
21 the issue is whether Whole Foods telling them to take it off on  
22 June 19 and June 20, the two days he's talking about, whether  
23 that was lawful or not.

24 MR. PETERSON: Your Honor, that misstates the testimony.  
25 It's been clear that at least at this particular store there

1 was some initial prohibition against masks. Then employees  
2 started wearing pins. Some employees were permitted to wear  
3 pins for awhile, including Mr. Read. At some point they were  
4 told the pins are not appropriate. They changed to jewelry.  
5 So this is kind of an evolving thing that's happening over  
6 time. Respondent's put on plenty of evidence that occurred  
7 after June 19th, including the Telegram chats that we're  
8 talking about. So I don't understand how it's, like, limited  
9 in timeframe. This is obviously an issue that was evolving  
10 both from Whole Foods enforcement standpoint, and from an  
11 employee, employee motivation and what their concerns were.  
12 And we've seen how the demands have evolved at different  
13 stores, and the demands evolved at this store as well. I, if,  
14 and, and so if -- so that's why -- that's where, that's where I  
15 see the relevance that, that this witness has testified about  
16 racism generally, which is obviously a concern that is  
17 protected by the National Labor Relations Act. The specifics  
18 of what that racism means can shed additional light on it on --

19 JUDGE SOTOLONGO: Okay. But I do want -- in general  
20 terms, general terms -- your case. But you have the burden of  
21 proof her. Okay?

22 MR. PETERSON: True.

23 JUDGE SOTOLONGO: So if you ask him what did you generally  
24 think about -- it's -- there has to be a nexus between his  
25 activity or their activity, which was wearing Black Lives



1 Matter, and that's what we need to get to.

2 MR. PETERSON: Certainly.

3 JUDGE SOTOLONGO: To whom it was conveyed, and how was it  
4 conveyed?

5 MR. PETERSON: Right. And I think he's established the  
6 timeframe is that the research began after he learned that  
7 employees had been sent home, and as he's considering wearing  
8 the mask. So we have a timeframe. The research methods are  
9 even --

10 JUDGE SOTOLONGO: All right. So limit your questions to  
11 that then. Go ahead.

12 Q. BY MR. PETERSON: So during that timeframe after you had  
13 learned that the, the employees had -- at least some employees  
14 had been asked to remove their masks, I was just asking you to  
15 just articulate a little more clearly the research methods that  
16 you -- when you said research, what do you mean by that?

17 A. Generally having conversations -- I'm sorry. Specifically  
18 having conversations with other team members, usually not on  
19 the sales floor, but while we're near the -- in the back  
20 hallway. So not around customers. Or in the break room;  
21 other, other spaces. Having conversations generally starting  
22 with, starting with have you heard about Alexis being sent  
23 home? Have you heard about Chris taking off her mask? Quickly  
24 followed by both of us agreeing the uniform policy has never  
25 been a thing before. What's going on here? A lot of people

1 saying, like, oh, was it really racist then, huh? And that was  
2 a lot of people's impression. So that would have been how a  
3 lot of the conversations started. Me early on saying, like, I  
4 want to get a mask, that quickly changed when everyone else was  
5 doing pins. Okay, cool. I want to get a pin. Talking about  
6 that with, with people. You have a pin? You going to wear  
7 one? We should all wear them? Lots of conversations about I  
8 was very interested in what if 20 of us wear masks one day?  
9 And then in those conversations, especially when I'm talking to  
10 black people, and this would have been not the first day after  
11 initially the conversation was, like, you going to wear one?  
12 I'm going to wear one. Let's all wear them in support.  
13 Definitely the conversations started to be a few days after  
14 that have you experienced racism? Can you give me examples of  
15 racism that you experienced? My friend Travis right in this  
16 time period saying, oh, I'll give you a few. And they're in  
17 -- those are in the affidavit. I can lay them out as I  
18 remember them. But most of these examples that came up in this  
19 research in these conversations in the weeks after Alexis and  
20 Chris were told to remove their mask or sent home, most of  
21 those are in the affidavit. But there were many conversations.  
22 Q. We're also trying to avoid naming employees that aren't --  
23 A. I apologize.  
24 Q. -- that aren't part of the complaint. But without looking  
25 at your affidavit, can you -- do you recall any, any specifics

1    that your --

2           MR. FERRELL:  Objection, objection.

3           MR. PETERSON:  -- black workers -- I'm sorry.

4           MR. FERRELL:  Objection, Judge, on relevance and hearsay.  
5    I mean, we don't need a mini-trial on the merits of Travis or  
6    any other team members' allegations about some racial  
7    discrimination.  First of all, it's not the issue before you.  
8    Second of all, if they want to introduce evidence that Travis  
9    or whomever Mr. Read has spoken to, then bring them in.  This  
10   I'm going to testify on hearsay about what somebody allegedly  
11   told me, and I'm going to offer it for truth about alleged  
12   racial discrimination doesn't have anything to do with the  
13   issue that we're here about, and it's complete hearsay.  Bring  
14   the witness in, if it's relevant at all.

15          MR. RITTERMAN:  May I please respond to that?

16          MR. PETERSON:  Actually, can I respond since it's my  
17   objection?  But, yeah, the hearsay, we're not offering this for  
18   the, for the truth.  This is explaining the, the witness'  
19   motivation, and what he meant by all of these comments and  
20   remarks in the chats to, you know, to his managers, to his co-  
21   workers.  He's explaining the basis of how his, how his view  
22   has evolved, and what his understanding is of -- not that,  
23   not that these things actually happened.  I mean, but they were  
24   reported to him.  We're not seeking to use for its truth his  
25   testimony about whatever his co-workers said about racist

1 issues, but it's -- it goes to also his credibility about why  
2 he, why he believes that this is a -- that there is racism at  
3 Whole Foods.

4 MR. FERRELL: How can I explore that credibility when I'm  
5 not allowed to even know the identify of the person or to  
6 cross-examine?

7 MR. PETERSON: The truth is -- again, it's not being used  
8 for its truth. It's this person's motivations, and that's what  
9 it's being offered for.

10 MR. FERRELL: Fundamentally unfair, Judge.

11 JUDGE SOTOLONGO: All right, well go ahead. I'll see  
12 where this goes. We're -- beyond and, again, there's a nexus  
13 here, and the thing about evolving, you have to cut it off  
14 somewhere because -- well, I don't want to say -- I don't want  
15 to explain it. I'll explain later -- in the presence of, of  
16 the witness. But so I will not do so. Go ahead and ask your  
17 question.

18 MR. PETERSON: Okay, yeah.

19 Q. BY MR. PETERSON: Do you recall any examples of what you  
20 understood to be racist or racially unfair conduct that your  
21 co-workers reported to you happened to them at Whole Foods?

22 MR. FERRELL: Objection relevance. If it's not tied to  
23 the wearing and the displaying of the Black Lives Matter  
24 messaging --

25 MR. PETERSON: That is, that is the --

1 MR. FERRELL: Wasn't --

2 MR. PETERSON: Do I need to repeat it every time?

3 MR. FERRELL: Yes.

4 MR. PETERSON: I mean, so this is the timeframe --

5 MR. FERRELL: Not just the timeframe, Judge. Lots of  
6 other things can happen in the same timeframe.

7 JUDGE SOTOLONGO: Go ahead.

8 Q. BY MR. PETERSON: As you've laid the foundation of when  
9 you started wearing the pin after Chris and Alexis had been  
10 told that their masks needed to be removed, the research that  
11 you were testifying to involved talking to your co-workers, can  
12 you describe any of the topics that they brought up that you  
13 viewed as racist and supporting your assertions that there is  
14 racism at Whole Foods?

15 A. Yes. Team member told me that they were asked to show the  
16 receipts for the food that they bought or asked did you really  
17 pay for that? Which we agreed does not happen to white team  
18 members. We were allowed to buy food, and to take it back to  
19 the break room. They're walking back to the break room, asked  
20 by a manager if they bought their food. They felt that that  
21 was of racist origin. A team member explaining to me that  
22 their managers that, that there's -- that black people can't be  
23 themselves. That white jokes are understood, white vernacular  
24 is understood. Black vernacular is not. And that harmless  
25 expression of joking with a friend turned into them being

1 reprimanded for possibly having -- for, for the, the impression  
2 of the white team members was that the black team member was  
3 going to be violent when that was a ludicrous assumption. If  
4 you were culturally fluent with black people in Philadelphia  
5 you would know this person was not at all being violent or  
6 threatening violence, and you only thought that because you are  
7 not familiar with black culture. And that person was  
8 reprimanded. It was very upsetting for them. Unequal  
9 enforcement of the phone issue. We're not supposed to be on  
10 our phones in the back of the house. People very often are on  
11 their phones either texting or making a quick call. Black  
12 people reporting I've been told to get off my phone. Me  
13 acknowledging to them Matt just walked me while I was on my  
14 phone. I said, I'm sorry, and they said don't worry, you're  
15 good. These and this was all in my figuring out how I wanted  
16 to go about wearing pins.

17 JUDGE SOTOLONGO: Well, let me ask you this. I'm going to  
18 see if I can go through this because otherwise you're going to  
19 be here for the next several days.

20 THE WITNESS: Got you.

21 JUDGE SOTOLONGO: Okay. And I'm sorry to say but -- all  
22 of these issues that you're talking about now, this, this what  
23 you call, and correct me if I'm wrong, evidence of racism or --  
24 by Whole Foods, does this start in June of 2020 or had this  
25 been going on for awhile?

1           THE WITNESS: Me having conversations about racism would  
2 not have just started in June of 2020. That is something --

3           JUDGE SOTOLONGO: How long would you say that you had  
4 these conversations with your fellow workers about these, about  
5 these issues?

6           THE WITNESS: The ones that I just mentioned were all  
7 June, July 2020. Conversations at all about racism the whole  
8 time I --

9           JUDGE SOTOLONGO: And if I understand your, if I  
10 understand your testimony, please correct me if I'm wrong. I  
11 don't want to misquote you or misunderstand you. These  
12 conversations happened in light of the fact that some of your  
13 co-workers had been told their Black Lives Matter messaging,  
14 correct, whether it be masks or pins or pendants; is that  
15 correct?

16          THE WITNESS: Yes. All the conversations I just laid out.

17          JUDGE SOTOLONGO: Okay. So if I understand you correctly  
18 then these conversations were of the nature that your, your  
19 fellow employees, some of who, I guess, were African-Americans,  
20 were -- believed that they're being told to remove the -- their  
21 Black Lives Matter messaging was, was racist, was evidence of  
22 that Whole Foods was being, was being racist? Is that -- am I  
23 understanding this correctly?

24          THE WITNESS: 100 percent.

25          JUDGE SOTOLONGO: Okay. So before they were asked to

1 remove these messaging that these conversations weren't  
2 happening. So these happened as a result of their being told  
3 to remove this messaging; is that correct?

4 THE WITNESS: The conversations that I just listed, yes.

5 JUDGE SOTOLONGO: So, okay. So it was the result of them  
6 being told to remove those, and it was the view of those that  
7 you spoke to, if I understand you correctly, that this was  
8 racially motivated? This is -- reflective of racism or unequal  
9 treatment of African-Americans by, by Whole Foods?

10 THE WITNESS: Yes.

11 JUDGE SOTOLONGO: To your knowledge have there been  
12 -- are there prior to the summer of 2020 -- you began working  
13 there when?

14 THE WITNESS: I began working February of 2019.

15 JUDGE SOTOLONGO: Okay. You've been there a couple of  
16 years by this time.

17 THE WITNESS: Year and a half.

18 JUDGE SOTOLONGO: Year and a half, year and a half, okay.

19 THE WITNESS: Just under --

20 JUDGE SOTOLONGO: During that period of time before this  
21 occurred, before the murder of George Floyd, and then the, the  
22 events that occurred after. And had there been -- had you had  
23 other -- had you been protesting? Had there been any to your  
24 knowledge in the store any kind of protests or conversations  
25 with management, complaints to management that, that the



1 African-Americans were being treated unequally or in a  
2 discriminatory manner?

3 THE WITNESS: Yes. There was some conversations, yes.

4 JUDGE SOTOLONGO: Between employees or between employees  
5 and management?

6 THE WITNESS: That I'm aware of -- well, I was aware  
7 between -- talking to employees I became aware of conversations  
8 that have happened or even litigation that had taken place  
9 between employees and management.

10 JUDGE SOTOLONGO: Okay. But you, you're not, you were  
11 not, you're not aware of these, of the details or --

12 THE WITNESS: Only vaguely. I remember at times who told  
13 me what they knew, but it would be -- I, I -- yes.

14 JUDGE SOTOLONGO: Go ahead.

15 Q. BY MR. PETERSON: You testified about your affidavit,  
16 about giving the affidavit by telephone. You recall that  
17 testimony?

18 A. Yes, I do.

19 Q. Do you recall if you were asked specifically about whether  
20 you had conversations with customers about while you were  
21 wearing the Black Lives Matter mask when you were giving the  
22 affidavit?

23 A. I do not recall being asked about that.

24 MR. PETERSON: Nothing further.

25 JUDGE SOTOLONGO: Mr. Rittenhouse.

1 MR. RITTERMAN: Ritterman.

2 JUDGE SOTOLONGO: Ritterman.

3 MR. RITTERMAN: No, that's okay.

4 JUDGE SOTOLONGO: I apologize. I wasn't -- I was --  
5 yesterday, and --

6 MR. RITTERMAN: Yes.

7 JUDGE SOTOLONGO: -- very nice area, by the way, and --

8 MR. RITTERMAN: Yes

9 JUDGE SOTOLONGO: --.

10 MR. RITTERMAN: You're not the first or even fifth person  
11 to do that.

12 JUDGE SOTOLONGO: All right, go ahead. I apologize.

13 MR. RITTERMAN: No, no problem at all.

14 **REDIRECT EXAMINATION**

15 Q. BY MR. RITTERMAN: Mr. Read, I want to refer you to R-58,  
16 which Mr. Ferrell asked you about, where you said I wanted to  
17 let you know that some of us are filing complaints with the  
18 National Labor Relations Board because WFM won't let us support  
19 BLM at work. Do you remember being asked about that?

20 A. I do remember, yes.

21 Q. Now, when you were referring to BLM, were you referring to  
22 the organization, its principals, both, neither?

23 A. Definitely not the organization. Referring to my  
24 understanding what Black Lives Matter means.

25 Q. And specifically what part of that understanding did you

1 want to support at work?

2 A. The need to root out systemic racism in all of its most  
3 minute forms.

4 Q. Mr. Ferrell asked you if you would like them to change the  
5 dress code policy. But prior to June 2020, how was the dress  
6 code as it actually existed in practice with regard to pins?

7 A. Definitely know of people wearing pins, and it not being  
8 an issue. People were allowed to wear pins before that.

9 Q. And did such pins include Gay Pride sort of pins?

10 A. I believe so.

11 Q. Okay. And you were asked about the controversial nature  
12 of Black Lives Matter, but would you agree that a Gay Pride is  
13 itself controversial in this country is it not?

14 A. Yes.

15 Q. And the very first people you saw this policy enforced  
16 against were of what race?

17 A. Black, African-American.

18 Q. Okay. And that radical shift in policy now being enforced  
19 against black people to what extent did that motivate you?

20 A. It was a very large part of the motivation.

21 Q. For both organizing and wearing -- organizing others to  
22 wear the pin or just wearing it yourself, both or neither?

23 A. Both.

24 Q. And Mr. Ferrell asked you about your family, and its  
25 interracial characteristics. Whole Foods is owned by what

1 corporation, if you happen to know?

2 A. I --

3 MR. FERRELL: Objection, relevance.

4 MR. RITTERMAN: I think it's relevance will become obvious

5 --

6 JUDGE SOTOLONGO: What was the question again? I missed  
7 it.

8 MR. RITTERMAN: Who owns Amazon? Who owns Whole Foods?  
9 Sorry. I gave away the answer.

10 JUDGE SOTOLONGO: I don't think that's really relevant.

11 Q. BY MR. RITTERMAN: Okay. To what extent, if any, does a  
12 major corporation exercising what you see as racial  
13 discrimination of its employees suggest about the prospects for  
14 your family?

15 A. It's certainly an example of when I say it's both local  
16 and global or within the store and without. Anything Whole  
17 Foods, Amazon being huge organization, to me does speak to that  
18 the work we do there can be important on a larger scale.

19 Q. Now these Telegram chats you're involved in, are they  
20 mostly employees, only employees, not at all employees?

21 A. Mostly employees. I believe at one point there was one  
22 former employee, and I believe everyone else current employees.

23 Q. Okay. And to what extent, if any, were you getting them  
24 to work together to fight against the racism that you were  
25 perceiving and discussing in these chats?

1 A. So that that was the entire interest of the Telegram. It,  
2 it -- could you repeat the question? Was it my effort?

3 Q. Yes. To the extent that you can speak for yourself.

4 A. Yes. That was my entire reason for joining Telegram was  
5 to learn about what organizing is happening, how people are  
6 trying to work in solidarity with the very upsetting happening  
7 of the uniform policy all of a sudden being enforced, and being  
8 enforced against two black employees. That was the whole  
9 reason I joined Telegram was to learn about how to be a part of  
10 that, and to organize, and be active and learn how to help  
11 others who were already active.

12 MR. RITTERMAN: Thank you, Mr. Read.

13 Those are my questions, Your Honor.

14 JUDGE SOTOLONGO: Mr. Ferrell.

15 **RECROSS-EXAMINATION**

16 Q. BY MR. FERRELL: Mr. Read, the -- with respect to the  
17 Black Lives Matter messaging, the prohibition on facemasks  
18 Black Lives Matter facemasks from messaging on the facemasks  
19 being in violation of the dress code policy, that was not only  
20 enforced against African-American team members, right?

21 MR. RITTERMAN: Objection. I want to know at what point  
22 in time we're being asked about.

23 MR. FERRELL: The entire, the entire time.

24 JUDGE SOTOLONGO: Well, yeah, this -- happened in the  
25 summer of 2020, right?

1 THE WITNESS: Yes -- summer of 2020.

2 Q. BY MR. FERRELL: It wasn't enforced against only African-  
3 American team members, right?

4 A. The first when I heard of it, it was against two African-  
5 American team members.

6 JUDGE SOTOLONGO: -- your store, you're talking about the  
7 in New Hampshire or are you talking --

8 THE WITNESS: No. I'm talking about in my store.

9 JUDGE SOTOLONGO: In your store? Okay. Go ahead, sir.

10 Q. BY MR. FERRELL: You mean when you first heard about it?

11 A. Yes.

12 Q. But it was enforced, as you know, against all the team  
13 members -- the policy was enforced as to all the team members  
14 in the store?

15 A. Soon as Alexis and Chris were told to -- they could not  
16 wear their masks, I believe it was assumed none of us could  
17 wear masks.

18 Q. Do you know who Amber Caruthers is?

19 A. I --

20 Q. You don't know an Amber at the store?

21 A. If I saw a face, I may recognize it. I'm not saying I  
22 -- that may be possible. It's been awhile, and I'm not  
23 recalling an Amber at the moment.

24 Q. She would be assistant or associate team leader in bakery.

25 A. Okay. Give me a second. Associate team leader in bakery

1 in May or June -- in June 2020?

2 Q. Correct. White female.

3 A. I think I know who that is. We were not close, and I, I  
4 mean, given the lineup, I could guess that's the person I've  
5 seen before.

6 Q. Okay. So --

7 A. But I don't know really who they are.

8 Q. But you don't know then unless you've maybe heard but --  
9 whether Amber Caruthers was someone, white female, who was sent  
10 home --

11 MR. PETERSON: Objection.

12 MR. FERRELL: -- on June 1, or went home on June 1 for  
13 being asked to remove her Black Lives Matter mask?

14 MR. PETERSON: Objection, the foundation.

15 MR. FERRELL: I'm asking whether he knows.

16 MR. PETERSON: The witness is not -- he doesn't know who  
17 this person is, is what he's testified to.

18 JUDGE SOTOLONGO: Well, did you hear about her being sent  
19 home?

20 THE WITNESS: I don't remember that.

21 JUDGE SOTOLONGO: Okay. That's answer to that, right.

22 Q. BY MR. FERRELL: So you know about the two people you knew  
23 about from June 19 or June 20, but you don't necessarily know  
24 about everybody; is that fair?

25 A. Apparently, yeah.

1 Q. All right. And the policy that -- with respect to you and  
2 your pin on the apron and your necklace, you were spoken to by  
3 management, right, leadership?

4 A. Yes.

5 Q. As a white male, you were also asked to remove your button  
6 at times because it's dress code violation, right?

7 A. Yes.

8 Q. Remove your necklace under dress code, right?

9 A. Yes.

10 MR. FERRELL: No further questions.

11 JUDGE SOTOLONGO: All right. I think that's wrap for this  
12 witness. It's now 13 'till 1. All right. Let's -- I'm sorry,  
13 Mr. Read. Thank you very much for your testimony. Please do  
14 not discuss your testimony with any other witness or potential  
15 witness in this matter until this whole thing is over. Thank  
16 you for your testimony. And I'm going to be discussing some  
17 housekeeping matters with counsel so --

18 THE WITNESS: All right. Thank you.

19 JUDGE SOTOLONGO: -- if you want to wait out -- talk to  
20 Mr. Peterson, he'll be out in a couple of minutes.

21 THE WITNESS: Okay.

22 **(Witness excused.)**

23 MR. RITTERMAN: Your Honor, I believe that concludes my  
24 business before the Court. May I please be excused?

25 JUDGE SOTOLONGO: Sure.



1 MR. RITTERMAN: Thank you very much, Your Honor.

2 **(Off the record from 12:48 p.m. until 1:46 p.m.)**

3 JUDGE SOTOLONGO: Mr. Peterson, you ready to call your  
4 next witness?

5 MR. PETERSON: Yes, Your Honor. General Counsel calls  
6 Leea Kelly.

7 JUDGE SOTOLONGO: All right, Ms. Kelly, please come  
8 forward. Ms. Kelly, you can remove your mask while you're on  
9 the -- let me swear you. Will you please raise your right  
10 hand?

11 (Whereupon,

12 **LEEa KELLY**

13 was called as a witness by the General Counsel, and after  
14 having been first duly sworn, testified as follows:)

15 JUDGE SOTOLONGO: Could you please spell your name for us,  
16 and give us your address?

17 THE WITNESS: My first name is L-e-e-a.

18 JUDGE SOTOLONGO: L-e --

19 THE WITNESS: Two e's, L-e-e-a.

20 JUDGE SOTOLONGO: Okay.

21 THE WITNESS: Last name Kelly, K-e-l-l-y.

22 JUDGE SOTOLONGO: Okay. And your address.

23 THE WITNESS: And my current address is 701 South 16th  
24 Street, One Six, Philadelphia, PA, 19146.

25 JUDGE SOTOLONGO: All right, thank you.

1 All right, please proceed, Mr. Peterson.

2 MR. PETERSON: Thank you, Your Honor.

3 **DIRECT EXAMINATION**

4 Q. BY MR. PETERSON: Good afternoon.

5 A. Hello.

6 Q. Start by asking if you have prefer pronouns and  
7 honorifics?

8 A. I use she, her, and Miss.

9 Q. All right. Miss Kelly, as you know, I'm Matt Peterson.  
10 I'm the attorney for the National Labor Relations Board. We're  
11 going to be asking you some questions. Listen carefully,  
12 answer truthfully. If you don't answer -- or if you don't  
13 understand a question, let us know, and we can, we can word it  
14 in a different way. And remember that this is being recorded.  
15 So head gestures and uh-huhs and huh-uhs don't get recorded.  
16 And make sure you give a, give a little pause before you answer  
17 so, so the attorneys can make objections if they need to. And  
18 make sure that the attorney is finished asking the question  
19 before you answer so we're not talking over each other. Are  
20 you familiar with a company called Whole Foods?

21 A. Yes. I worked there for about a year from August 2019 to  
22 July of 2020.

23 Q. And did you work at a particular Whole Foods store?

24 A. I worked at the one on South Street in Philadelphia.

25 Q. Did you work in a particular position?

1 A. Yes. I was a cashier. The department was called Store  
2 Support, and that lumped in cashiers and janitorial staff.

3 Q. Did you work any other positions in your time at Whole  
4 Foods?

5 A. No.

6 Q. So these questions are largely going to be focused on the  
7 summer of 2020. Were you working a regular schedule during the  
8 summer of 2020?

9 A. Yes. I was full-time, which was 36 hours at Whole Foods.

10 Q. And did you have regular days, regular workdays or days  
11 off?

12 A. It did vary week-to-week. I usually worked mornings, and  
13 I believe Tuesday and Saturday were typically my days off.

14 Q. And what's the morning shift typically?

15 A. Usually I would open. That would be, I believe, I was in  
16 at 6:30 on a regular basis, and I would usually leave sometimes  
17 between 1 or 2.

18 Q. Do you recall who -- the management structure in your  
19 store during summer of 2020?

20 A. So we had team leaders and store leaders. The team  
21 leaders were basically department heads and supervisors; and  
22 then the store leaders were sort of like general manager and  
23 management of the whole store.

24 Q. And who, who were your team leaders and store team  
25 leaders? What were their names if you recall during summer of

1 2020?

2 A. So my immediate supervisor or the -- I'm sorry. The  
3 supervisor for the department was Valerie Johnson. She ran  
4 Store Support. And I remember the store leaders, the head of  
5 the store when I started was Joe Burton. There was also -- I  
6 only remember first names, but Jamie, Matt, and Albana were  
7 also store leaders.

8 Q. Was that Matt Kowalski?

9 A. Yes.

10 Q. Jamie Kotmair?

11 A. Correct.

12 Q. And who was the other?

13 A. Albana, she started later on. So she may not have been a  
14 part of that list.

15 Q. Okay. Are you familiar with the term Black Lives Matter?

16 A. I am, yes.

17 Q. You aware of its acronym BLM?

18 A. Yes.

19 Q. Have you ever worn anything at work with the phrase Black  
20 Lives Matter or BLM on it?

21 A. Yes.

22 Q. More than once?

23 A. Yes.

24 Q. About how many times?

25 A. I would probably say a couple dozen starting in early June

1 of 2020.

2 Q. And did you continue to wear the Black Lives Matter  
3 messaging until when? When did you say you stopped working  
4 there?

5 A. It was the middle of July of 2020. I don't remember the  
6 exact date, but I was until my final day there.

7 Q. So once you started wearing it you, you didn't -- you wore  
8 it every day after you started?

9 A. I changed what method I was wearing it, but I was wearing  
10 something that had either BLM or Black Lives Matter, yes.

11 Q. Do you recall what you first wore?

12 A. I believe the first thing I wore was a button that said  
13 the full phrase Black Lives Matter.

14 Q. And what else did you wear?

15 A. I eventually switched to different methods of jewelry that  
16 said BLM or Black Lives Matter; either pendants for the most  
17 part or occasionally a bracelet. I made a couple pairs of  
18 earrings.

19 Q. Do you have any of those items with you today?

20 A. Yes. I'm wearing this. I think this might have been the  
21 first pin that I wore, and I also have one of the copper pins  
22 with me as well which is right here.

23 Q. Okay. And actually exhibit -- I can show you -- this is  
24 General Counsel's Exhibit 48.

25 MR. PETERSON: May I approach, Your Honor?

1 JUDGE SOTOLONGO: Yes. You previously marked it 48 or?

2 MR. PETERSON: It's either 48 or --

3 **(Simultaneous comments.)**

4 JUDGE SOTOLONGO: 48, okay, yes.

5 Q. BY MR. PETERSON: Go ahead and take a look at General  
6 Counsel's 48 there.

7 **(Pause.)**

8 Q. BY MR. PETERSON: Have you had a chance to look at that?

9 A. Yes.

10 Q. Do you recognize the photographs in there?

11 A. Yes. The last three of this are things that I made. I  
12 did stitch BLM into one of the Whole Foods masks. The other  
13 pin and necklaces, which are on page 3 and 4, are things that I  
14 made.

15 Q. Did you -- I guess you have -- the examples you have one  
16 you're wearing on your necklace is a copper, copper pendant.  
17 Is that -- do you see that in the exhibit? Is that a similar  
18 --

19 A. That is almost the same thing as the page 3 pin. It's  
20 just slightly reformatted so it fits on a necklace.

21 Q. And then you have another. Is that a pin you have with  
22 you as well?

23 A. Yes. This is one of the copper pins.

24 Q. Okay. And those are what's reflected in -- on page 3 of  
25 General Counsel's 48?

1 A. Correct.

2 Q. One of them in pin form; one of them in necklace pin form?

3 A. Correct.

4 Q. And then page 4, what are those?

5 A. These are polymer clay pendants that I made, some of which  
6 say Black Lives Matter, some of which have the acronym BLM.

7 Q. And did you wear any of those?

8 A. I wore them until somebody wanted one, and I was able to  
9 give them out. So most of these were things that I was giving  
10 out to my co-workers, but I would wear them until they were  
11 given out.

12 Q. And page 1, do you recognize what's on page 1?

13 A. Yes. These are some of the buttons that we would wear in  
14 the store.

15 Q. Did you ever wear one of those buttons yourself?

16 A. Yes.

17 Q. And then you have another button that you're wearing right  
18 now.

19 A. Yes.

20 Q. And can you -- that appears to be about 3, a 3-inch, 3-  
21 inch circle. Says -- it has some, some art on it, and Black  
22 Lives Matter, the words written out in white print with a black  
23 background. Is that a fair description?

24 A. Yes. It says Black Lives Matter, and it has the names of  
25 some of the people that have been killed by police.

1 Q. In that --

2 A. In small font.

3 Q. In small font.

4 A. It's kind of hard to read, but that's what's printed on  
5 here.

6 Q. Okay. Anything else that you, that you wore?

7 A. The mask, which was one of the masks that Whole Foods gave  
8 me, a cloth mask. I stitched the letters BLM into.

9 Q. And that's on page 2 of General Counsel's 48?

10 A. Correct.

11 MR. PETERSON: Move for the admission of General Counsel's  
12 48.

13 JUDGE SOTOLONGO: Any objection?

14 MR. FORMAN: No objection.

15 JUDGE SOTOLONGO: All right, General Counsel 48 is  
16 admitted.

17 **(General Counsel Exhibit 48 received in evidence.)**

18 Q. BY MR. PETERSON: What motivated you to start wearing the  
19 Black Lives Matter adornments that you described?

20 A. Well, I was aware of what was happening nationally with  
21 the Black Lives Matter movement, and that was part of why I  
22 wore them. I had also heard -- eventually I had heard about  
23 what was happening in other Whole Foods nation-wide, and how  
24 people were being sent home for wearing masks and pins that  
25 said the same thing, and I wanted to stand against that. And



1 then eventually the store leader, Joe Burton, assisted some of  
2 the police officers who partook in essentially gassing people  
3 on 676 during one of the protests in Philadelphia. He gave  
4 food to some of those officers. And we as members of the store  
5 felt outraged by this. So we wanted to speak out against it.

6 Q. Do you remember the first -- the date when you first  
7 started wearing the Black Lives Matter?

8 A. I know that the protest that Joe had fed the police  
9 officers was on June 1st, and I want to say I started wearing  
10 the pin within a week of that.

11 Q. Are you talking about a protest that took place at your  
12 Whole Foods store?

13 A. No. A protest that happened in Philadelphia that was the  
14 day, the same day that Joe Burton fed the police officer.

15 Q. Oh, I see. Did you see Joe Burton feed police officers?

16 A. I did not witness it, but members of our staff did.

17 Q. And what was, what was their -- what was your reaction  
18 after learning that Joe Burton had fed the police officers?

19 A. I was upset especially because members of our store were a  
20 part of where people were trapped on 676 by the police. So  
21 naturally we were upset. They claimed in the store and our  
22 management that they weren't taking a stance, but to us that  
23 really felt like they were taking a stance, and we wanted to  
24 speak out against that.

25 Q. How many -- did you observe other co-workers wearing Black

1 Lives Matter messaging at work?

2 A. I did. In the beginning it sort of built up slowly where  
3 there was a few of us, and then people kind of started to gain  
4 traction. Once I started giving out necklaces most of the  
5 people in the store were wearing them. At that point I want to  
6 say it was at least a few dozen when at the, at the height of  
7 when people were wearing them.

8 Q. Did you participate in any discussions with your co-  
9 workers about wearing the, wearing the Black Lives Matter  
10 messaging?

11 A. Yes. We had a group chat where we were discussing what  
12 had happened with Joe, some COVID issues that we were having,  
13 and general issues in the workplace, and we did talk about the  
14 pins. That was part of how I figured out that there was an  
15 interest and why I started making them because people couldn't  
16 get their hands on them. So we did talk about it, and talked  
17 about why we felt that way.

18 MR. PETERSON: Your Honor, may I approach the --

19 JUDGE SOTOLONGO: Yes.

20 MR. PETERSON: General Counsel's -- I have what's marked  
21 as General Counsel's Exhibit 50. It's already in evidence.

22 Could you -- there's three e-mails in there. Go ahead and  
23 flip through --

24 JUDGE SOTOLONGO: This is General Counsel's --

25 MR. PETERSON: 50.

1 JUDGE SOTOLONGO: 50.

2 Q. BY MR. PETERSON: Let me know if you recognize those.

3 A. I do recognize these, yes.

4 Q. And where have you seen those before?

5 A. I was not the author of this, but I was somebody who was  
6 collectively putting my input into what I felt should be in  
7 this, and I was part of the discussion of what should be  
8 written here.

9 Q. And what was your purpose in -- I guess it was who was the  
10 intended recipient of these, of these e-mails?

11 A. This was in response to not only Joe feeding the police  
12 officers, but the way that we found out was through an  
13 Instagram infographic that an individual posted, and was fired  
14 for. And after that had happened we were all afraid that we  
15 were going to be fired if we even tried to speak out about this  
16 or tried to talk to our management about this. And after this  
17 employee was fired, they tried to have one-on-one meetings that  
18 were very intimidating. They were closed door meetings without  
19 asking employees what they preferred. There was no option for  
20 town halls at this time. So we felt that was unacceptable, and  
21 we thought an anonymous e-mail to explain this feeling was the  
22 only way that we could go about getting our message across.

23 Q. And was management one of the intended targets of this?

24 A. Yes.

25 Q. On page 2, the first full paragraph, there's a reference

1 to feeling that the actions of Joe Burden dissolved trust and  
2 endangered safety. Do you know what the safety concern was?

3 A. Yeah. So a lot of our staff were people of color, and  
4 this was at the time where Philadelphia was on a really heavy  
5 lockdown. And a lot of things that happened in this whole  
6 procedure we felt directly threatened them. First of all  
7 involving the police further than they had to be in feeding  
8 them just felt like kind of a slap in the face to a lot of the  
9 people that were at this protest and were a part of this, and  
10 the fact that our parent company Amazon had shown support for  
11 Black Lives Matter. Also after the employee was let go, the  
12 door code had been changed, and the police nearby had been  
13 stopping people of color, and asking them for credentials,  
14 asking them where they're going. I didn't personally witness  
15 this, but I heard rumors that people were being taken in if  
16 they were --

17 MR. FORMAN: Objection. I'm going to object as to  
18 hearsay.

19 MR. PETERSON: Yeah, not for the truth.

20 JUDGE SOTOLONGO: Okay. I'm not taking it for the truth  
21 of the matter asserted. So, okay.

22 THE WITNESS: Okay.

23 JUDGE SOTOLONGO: Go ahead.

24 THE WITNESS: People were afraid to be left outside with  
25 the doors locked, and this wasn't communicated very well. So

1 these are why we felt our safety was threatened.

2 Q. BY MR. PETERSON: It also mentions -- you mentioned the  
3 one-on-one meetings, which are referenced in this, this first  
4 e-mail, and that the demand for a store meeting.

5 A. Um-hmm.

6 Q. Do you know if any store meetings eventually occurred?

7 A. Yes. So the first -- there were quite a few store  
8 meetings. The first of the store meetings were just allowed  
9 higher level employees, store leaders and team leaders. They  
10 were the only ones permitted in this. I think there were a few  
11 exceptions to that.

12 Q. And how did you learn, how did you learn that these  
13 meetings were taking place?

14 A. The employees were talking about it. We talked about it  
15 in the store, and some of the higher-ups had mentioned that  
16 they were going or that they had been there. After that, they  
17 opened the floor to anybody was allowed to come up to these  
18 meetings. This was Joe Burton basically pulled us all into a  
19 group outside. This was in the middle of COVID. So we all  
20 were up on a roof. We did this in small groups. So there  
21 wasn't a big whole staff meeting at any given point, but there  
22 were small groups of us that would go up and talk about it, and  
23 basically Joe explained what he did.

24 Q. I'm sorry to interrupt, but did you attend? How many of  
25 these meetings did you attend yourself?

1 A. I attended one with Joe, and one later on with some of the  
2 regional directors.

3 Q. Okay. Do you remember when that meeting with Joe took  
4 place?

5 A. I don't recall the exact date, but I believe that was  
6 within two weeks after June 1st. So within the first half of  
7 June.

8 Q. And about how many -- and this is on the rooftop?

9 A. Yes.

10 Q. About how many, how many employees?

11 A. I believe there was about 10 of us up there.

12 Q. And anybody from management other than Joe?

13 A. Joe was there, and Albana, who was an assistant store  
14 leader. So directly under Joe was also there.

15 Q. And about how long did the meeting last?

16 A. I recall it was about an hour.

17 Q. Who did most of the speaking?

18 A. So it was presented sort of like a town hall where Joe  
19 came up, said his piece, and then basically opened the floor to  
20 questions or comments. So after that it was kind of a back and  
21 forth between us and management.

22 Q. Do you recall any of the topics that were brought up?

23 A. I know him feeding the police was a big thing we talked  
24 about. We also talked about COVID concerns, and how we felt it  
25 was not only unjust but unreasonable his actions were given the

1 demographics of our store.

2 Q. Sorry. Give me a second.

3 A. No problem.

4 Q. Other than the pins and buttons and necklaces, did you,  
5 did you take any other actions in relationship to what was  
6 happening at Whole Foods?

7 A. Yeah. So like I said before I did stitch BLM into one of  
8 my masks. I also was wearing the pins on my apron. And  
9 eventually when we felt that there was a lot of inaction  
10 happening within our store, the people within the group chat  
11 organized a protest outside of the store.

12 MR. PETERSON: Permission to approach the witness.  
13 General Counsel's Exhibit 52.

14 Q. BY MR. PETERSON: Let me know when you've had a chance to  
15 take a look at that.

16 A. Yep, all set.

17 Q. Do you recognize what's on General Counsel's 52?

18 A. Yes. This was a infographic that we were distributing on  
19 social media trying to raise awareness, and get more people out  
20 to our protest.

21 Q. And what was the purpose of the protest?

22 A. As it says on the infographic we were upset that people  
23 were being sent home for wearing the Black Lives Matter  
24 merchandise, especially given Amazon's stance on the matter,  
25 and we're also upset at the hundred -- twenty dollars of

1 merchandise that was given to the police officers.

2 Q. Sorry. Turning back to General Counsel's 50, the second,  
3 the second e-mail, pages 3 and 4. There's a number of bullet  
4 points, numbered bullet points. You see those?

5 A. Yes.

6 Q. What were those?

7 A. So these were basically our demands for what we wanted  
8 from management given what had happened. And we sent out these  
9 e-mails that are in this list. There's more than one. And we  
10 felt that they were being ignored. So we wanted to reformat it  
11 in this bullet point so they might be easier to digest. One of  
12 which that Joe Burton be fired, or at least be held accountable  
13 for his actions. We also refused to do the one-on-one  
14 discussions that were presented to us initially because we felt  
15 unsafe. We felt that that would be a targeted action if we  
16 were to do that -- or that we would be targeted after the fact  
17 rather. We also wanted our store to use the text alert system  
18 for all important information such as the door code changing or  
19 if a COVID case had popped up in our store. We were also  
20 working to try and have some system in place to help us against  
21 verbally abusive and bigoted customers saying things to us at  
22 the register especially given this time. We had quite a few  
23 people come in aggressively voice their opinions on the matter  
24 to us despite just trying to do our jobs.

25 Q. What do you mean by on the matter?



1 A. In regards to the Black Lives Matter movement I witnessed  
2 multiple customers coming in and approaching our black  
3 employees, and aggressively asking them what they thought about  
4 things, and not accepting no for an answer. In a couple  
5 instances people would get loud. People would yell at their  
6 -- yell at our employees. And we didn't feel like management  
7 was ever stepping in to help us.

8 Q. Was that before or after you started wearing the Black  
9 Lives Matter messaging?

10 A. It was both. It definitely got worse. With the few that  
11 it was, I do want to point out that that was definitely the  
12 minority. The vast majority of the customers that I witnessed  
13 come in and say anything about the pins were in favor, and  
14 positively interacted with us. We never approached anyone  
15 about our views on this. But when approached, like I said, for  
16 the most part the neighborhood was in support of us, but the  
17 few that were aggressive and against us were very vocally  
18 aggressive and against us.

19 Q. And had you seen -- you said before and after. What did  
20 you see before you wore pins regarding abusive customers?

21 A. So it wasn't as high stakes at that time because this was  
22 kind of pro -- or I'm sorry, pre-COVID. So we weren't nearly  
23 as concerned about customers getting in our face, and coughing  
24 directly on us, or screaming in our face because that was  
25 obviously a bigger issue with COVID going around. But before

1 I, I've seen multiple people come in crying because of things  
2 that our customers would say, and we never really felt like  
3 management did anything about these customers even if they were  
4 repeat offenders.

5 Q. The third e-mail, pages 5 and 6 of General Counsel's 50,  
6 what was the purpose of that e-mail?

7 A. So this was a couple things. One, we wanted to voice that  
8 we did appreciate that the town halls were being held because  
9 that was more in line with what we thought was appropriate, an  
10 appropriate response. We're also raising money to Morris Home,  
11 which is a nonprofit in Philadelphia that we all felt was a  
12 good representation of where we stood as a store. And a big  
13 thing that we felt is if they truly were going off the claim  
14 that they were neutral on the subject, if they were going to  
15 make a donation to the police officers on this merchandise,  
16 then they should match that with something that we felt was  
17 sort of on the other side.

18 Q. And then page 2, the first bolded paragraph.

19 A. Yes. So this was also encouraging others to wear their  
20 pins, their masks, their shirts supporting Black Lives Matter.  
21 We wanted to get as many people as we could to sort of show  
22 support of this, especially as it says here we were seeing that  
23 people in the New Hampshire Whole Foods were being sent home  
24 for wearing the Black Lives Matter masks, and we were upset  
25 about that, and we didn't think that was right. So we wanted

1 to take a stand against that.

2 Q. The sentence paragraph below it, what does stand against  
3 all -- covert anti-blackness globally, nationally, locally, and  
4 in our store mean?

5 A. So that was us very clearly stating that we stood with the  
6 movement of Black Lives Matter. Something that we understood  
7 that we couldn't change what was happening outside of our store  
8 that was out of the question, but the things that were  
9 happening in our store, the aggressive customers, Joe feeding  
10 the police officers, we felt that directly correlated to us,  
11 and we wanted to very clearly again take a stand against that.

12 Q. And the last paragraph where it says we hope to work with  
13 you, and move forward to create a fair, more equitable  
14 workforce avoid of racism, sexism, transphobia and homophobia,  
15 what were you -- what was your purpose, and how did you hope to  
16 work with Whole Foods towards that, those ends?

17 A. So we wanted them to -- we wanted to actually feel heard  
18 in our concerns, and we wanted to feel like our management  
19 actually did care about our well-being. Especially because of  
20 COVID we really felt like they were neglecting us. We kind of  
21 felt like it was an us versus them instead of one big  
22 collective team. They would -- we felt that they would hide in  
23 their office when somebody aggressive whether it was about  
24 COVID precautions or racism or really anything. We felt that  
25 we were left to deal with the brunt of that, and if we tried to

1 come for help it was either too late or we were met with  
2 crickets.

3 Q. So the e-mail references Friday the 19th encouraging all  
4 members to wear the pins, masks, shirts, et cetera.

5 A. Um-hmm.

6 Q. Had you been wearing any of the pins or necklaces before,  
7 before, I guess, this e-mail was sent on June 18th?

8 A. Um-hmm. Yeah, I had already been wearing the pins and  
9 necklaces at this point.

10 Q. For about how, how long had you been?

11 A. I want to say it was at least a week at this point;  
12 probably more like two weeks. I don't remember the exact date  
13 when I started wearing them but it was sometime between June  
14 1st and then -- closer to June 1st though.

15 Q. Did more employees begin wearing the pins, masks, shirts,  
16 et cetera after June 19th?

17 A. I want to say people were ramping up to wearing them  
18 around June 19th. I know people were wearing the necklaces  
19 more frequently. And when I did give those to my co-workers  
20 they, they wore them pretty much every day until management  
21 told them they weren't allowed to any more. I don't recall the  
22 exact number of people that were wearing them, but it was  
23 definitely the majority of the store.

24 Q. Did you have any -- did you, yourself, have any  
25 conversations with -- actually, sorry. So you talked about the

1 meeting with Joe Burton. There was another meeting you  
2 recalled attending you said was regional management or higher  
3 level management?

4 A. Yes. So after the town halls with Joe, he was put on  
5 leave. I don't know if that was of his accord or Whole Foods  
6 asked him to do that. We never got that information. But  
7 after that they would bring in his, his boss, and then sort of  
8 kept escalating it. Three or four total meetings with regional  
9 directors.

10 Q. That you participated in?

11 A. No. In the store. I only participated in one of them,  
12 but that one was with Travis, Scott, and Michelle, I believe,  
13 were the names of the directors.

14 Q. Do you know Scott's last name?

15 A. I don't recall.

16 Q. Does Allshouse sound familiar?

17 A. Yeah, that sounds right.

18 Q. Travis' last name do you remember?

19 A. I don't remember their last names. I apologize.

20 Q. Does Phaup sound familiar?

21 A. Yeah. Sounds right.

22 Q. And where did, where did that meeting -- do you remember  
23 when that meeting took place?

24 A. So that was definitely -- I believe that was before the  
25 protest. I remember this was after they had hung up a sign

1 that said racism has no place here, which we felt was also kind  
2 of a silly thing that they weren't allowing us to wear Black  
3 Lives Matter merchandise. But one clear thing that I remember  
4 about that conversation is I tried from I believe it was Scott  
5 who I was talking with at this moment who was sort of leading  
6 the town hall, I asked for a direct answer as to why we weren't  
7 allowed to wear the Black Lives Matter merchandise, and he told  
8 me that it was not a Whole Foods approved slogan. So then I  
9 asked him as a follow-up, well, if I wanted to wear a t-shirt  
10 that said racism has no place here would that be allowed? And  
11 he immediately followed up with a no. And when I asked for  
12 clarification as to why that was, he said, well, it wasn't on  
13 Whole Foods merchandise. Which at that time there was no rule  
14 stating that we could exclusively wear Whole Foods merchandise.  
15 People were wearing -- as long as it wasn't profane, anything  
16 they wanted to wear.

17 Q. Do you recall any other discussions about any of the  
18 issues you guys had raised in the anonymous letters coming up  
19 in that meeting with Scott and Travis and Michelle?

20 A. At this point we were still trying to stay anonymous. So  
21 we didn't mention that we were the ones that wrote the letter  
22 in that meeting, at least I didn't. I know one of the things  
23 that we brought up that Scott had mentioned was that the reason  
24 that it was sort of being frowned upon was that it was  
25 political. Or the other rule that I had heard was that the

1 pins were defacing company property. And the counter arguments  
2 I gave to that were that people had been wearing pins on their  
3 aprons since I had been hired and before then that had nothing  
4 to do with that. And in addition to that, we had political  
5 magnets that were on sale at the register every day that I  
6 believe are still there now.

7 Q. What were the political magnets?

8 A. So at the time, we -- it was June so we had all kinds of  
9 different Pride flags. I remember Angela Davis magnet, who is  
10 a prominent civil rights figure. I do know that currently they  
11 are selling Black Lives Matter magnets. So they are on sale  
12 now at a Whole Foods store. But at the time those are the ones  
13 that I specifically recall.

14 Q. Did Scott respond when you brought that up?

15 A. He said he would look into it, and then I never heard back  
16 after that.

17 Q. Any other issues you recall being raised during that  
18 meeting?

19 A. I know we, we did talk about Joe a lot, and we talked  
20 about how we felt about him taking the merchandise for the  
21 police officers. We also talked about some separate issues  
22 with Joe. I was not really the person posing those because I  
23 didn't really have a whole lot of one-on-one interaction with  
24 Joe, but other people were voicing their concerns with things  
25 like one of the, one of the big thing I remember is --

1           MR. FORMAN: I am going to object to the extent that this  
2 witness said she did not have any issues with Joe. We're  
3 getting far afield from the reason we're here. So my objection  
4 is also as to relevance. Other issues people might have had as  
5 Joe as a leader have nothing to do with the core issue we're  
6 here for, Your Honor.

7           JUDGE SOTOLONGO: Well, I'm going to allow it. Go ahead.

8           THE WITNESS: Okay. I, the issue that I recall  
9 specifically is we had a active shooter lesson in one of our  
10 all staff meetings. We talked about what would happen if we  
11 had an active shooter in the building, and Joe came in with  
12 gunshot sounds on his phone, and we all felt how wildly  
13 inappropriate that was. Especially given the topic of the  
14 conversation.

15 Q. BY MR. PETERSON: Any other topics you recall that related  
16 to your -- the anonymous letters and the issues you raised in  
17 those?

18 A. We just reiterated that we didn't feel like management was  
19 standing with us with COVID or with our other customers who  
20 were coming in and aggressively accosting us.

21 Q. Do you recall if he had any response to the concerns about  
22 customers?

23 A. If Scott did?

24 Q. Yeah.

25 A. I think we kind of had a response of there's nothing that



1 we can do about it. I do know that he stated at one point that  
2 they were working towards putting more people of color in the  
3 forefront. And one of the people in the meeting that I  
4 attended asked specifically how, and we were given a we're  
5 working on it, but we can't give specifics kind of answer. And  
6 they also mentioned that they had made donations. But, again,  
7 when asked for specifics we weren't given any organizations or  
8 figures or anything of that sort. We were just told that it  
9 was happening, and we had to trust them.

10 Q. Do you recall if there was any discussion about the pins  
11 or the items that you were wearing in that meeting with Scott?

12 A. I know I was wearing the mask that was in the exhibit here  
13 that I stitched BLM into, and that was sort of where I was  
14 going with the, the conversation of asking why that was  
15 specifically not allowed. And we kind of felt like we were  
16 given non-answers, and they were definitely different answers  
17 from what was given to us by our management directly when we  
18 initially asked. So we kind of felt like they were making  
19 things up as they went along.

20 JUDGE SOTOLONGO: Ms. Kelly, let me -- you said it, and I  
21 didn't hear it. What was the -- what's the timeframe for this  
22 meeting with Scott?

23 THE WITNESS: I'm sorry?

24 JUDGE SOTOLONGO: What's the timeframe, approximately  
25 timeframe for this meeting you described, the one you had with

1 Scott?

2 THE WITNESS: The date?

3 JUDGE SOTOLONGO: Yes.

4 THE WITNESS: This was before the protest. So this was I  
5 want to say the week of one of the early teens of June. It was  
6 sometime in the middle of June.

7 JUDGE SOTOLONGO: Before what protest?

8 THE WITNESS: I'm sorry, yes. Before the protest on June  
9 21st at the store.

10 JUDGE SOTOLONGO: Okay. All right.

11 Q. BY MR. PETERSON: Do you recall giving an affidavit in  
12 this case?

13 A. I do.

14 Q. Do you recall if you talked about this meeting in the case  
15 in that affidavit?

16 A. I believe I did, yes.

17 Q. Would looking at that help refresh your recollection as to  
18 the date of this meeting?

19 A. I think so, yeah.

20 JUDGE SOTOLONGO: Well, before you do that -- I don't  
21 think you've exhausted the witness' recollection.

22 MR. PETERSON: Just as to the date.

23 JUDGE SOTOLONGO: Excuse me?

24 MR. PETERSON: Just as to the date.

25 JUDGE SOTOLONGO: Oh, okay, all right.

1 MR. PETERSON: Because I, yeah, I think that's important.

2 Q. BY MR. PETERSON: And, I guess, before I do that, the, the  
3 flyer, that green --

4 A. Um-hmm.

5 Q. -- yes. What's the date, what's the date stated for the  
6 protest?

7 A. So the date of the protest outside of the store is June  
8 21st.

9 Q. Did you participate in that protest?

10 A. I did.

11 JUDGE SOTOLONGO: Do you recall stating in your affidavit  
12 giving a date for your meeting with Scott?

13 What's Scott's last name, by the way?

14 MR. PETERSON: Allshouse, A-l-l --

15 JUDGE SOTOLONGO: Oh, that's --

16 **(Simultaneous comments.)**

17 JUDGE SOTOLONGO: Recall in your affidavit stating a date  
18 for that meeting?

19 THE WITNESS: I want to say I most likely did. I don't  
20 recall specifically if I did.

21 JUDGE SOTOLONGO: Well, you can just read it to her. Do  
22 you recall saying --

23 MR. PETERSON: Okay. I just want to --

24 JUDGE SOTOLONGO: Okay. Maybe you can stipulate -- she  
25 gave a date, and that way we can cut this short.

1 Q. BY MR. PETERSON: Okay. Yeah, in your affidavit you say  
2 it was on June 29th the meeting with Scott Allshouse. Does  
3 that sound --

4 A. That was -- that's definitely more accurate than my memory  
5 now. There were a lot of meetings so I may have had that  
6 confused with another one of the meetings, but I would go off  
7 of what I wrote in the affidavit since that was more fresh in  
8 my memory.

9 JUDGE SOTOLONGO: So this meeting, at least the one you've  
10 been talking about, was actually after the protest outside of  
11 the store?

12 THE WITNESS: Correct, yes.

13 JUDGE SOTOLONGO: Okay.

14 Q. BY MR. PETERSON: Do you recall if there was any  
15 discussion of whether it was okay to wear any of the buttons,  
16 pins or masks? It sounds like you were discussing masks, but  
17 do you remember any other discussion about what was permissible  
18 during that meeting?

19 A. Um-hmm. So they in the meeting gave us the answers I  
20 described earlier where Scott said that Black Lives Matter was  
21 not an approved Whole Foods slogan. And when I asked if we  
22 could wear the racism has no place here, he also said no.  
23 Towards the end of the meeting we were told the pins were fine,  
24 but we kind of felt the way that it was worded that it was fine  
25 until they figured out a reason for it not to be. And then

1 later on we were told that the rule had been changed, and we  
2 were not allowed. But at the time of the end of the meeting,  
3 we were told that we could wear the pins, just not on our  
4 aprons because that was defacing company property.

5 Q. At the -- before that meeting, had you, had you personally  
6 heard from any managers? Did any manager say anything to you  
7 about what you were wearing with the Black Lives Matter message  
8 on it?

9 A. Nothing had been said to me, but I had been told by other  
10 employees that they were --

11 MR. FORMAN: I'm going to object. Hearsay.

12 JUDGE SOTOLONGO: Is that a dispute, counsel? I mean, but  
13 there's been also testimony that there had been --

14 MR. FORMAN: It is in dispute.

15 JUDGE SOTOLONGO: So said before June 29th, there was --  
16 no employee had been told not to wear --

17 MR. FORMAN: Well, I think the evidence in the record is  
18 showing, Your Honor, that there was different treatment of  
19 different messaging at different points in the timeline. And I  
20 think there were points where no one was saying anything to  
21 anybody.

22 MR. PETERSON: Yeah, well, not offering it for the, for  
23 the truth, but these are reports that many employees had made  
24 and heard.

25 JUDGE SOTOLONGO: All right. But then you're not offering

1 it for the truth of the matter asserted, and then what's the  
2 relevance?

3 MR. PETERSON: It explains her -- explains the effect on  
4 the, on the listener understanding of what rules are -- or  
5 what, what's the -- how Whole Foods is treating the wearing of  
6 Black Lives Matter messaging even though this, you know, even  
7 though it hasn't happened to this employee, if you're hearing  
8 other employees saying we've been sent home. And there's been  
9 a lot of testimony. I'm surprised that this is in dispute  
10 actually but --

11 JUDGE SOTOLONGO: Well, I'll allow it. I'll give it  
12 whatever weight I think is appropriate.

13 You heard employees had been told not to wear Black Lives  
14 Matter messaging?

15 THE WITNESS: Yes. I had been told by other employees  
16 that they had been told that they were not allowed to wear it.  
17 However, the reasoning was different depending on seemingly the  
18 day and the manager.

19 JUDGE SOTOLONGO: Okay. That part I'm not going to --  
20 give much weight to it.

21 Q. BY MR. PETERSON: And did -- and so did you personally  
22 have any -- so up to the 29th that meeting with Scott Allshouse  
23 no manager had said anything to you about what you were  
24 wearing?

25 A. Correct.

1 Q. And what -- which of the items you described had you been  
2 wearing up to that point?

3 A. So I had been wearing the mask, the necklaces and a pin at  
4 that point.

5 Q. And so I think you testified that your mask was part of  
6 the discussion with Scott Allshouse?

7 A. Correct. He told me in that meeting that I was not  
8 allowed to wear that mask.

9 Q. And that was the -- that was the first thing you had heard  
10 from a manager that that was prohibited?

11 A. For me personally, yes, correct.

12 Q. Were you wearing any other -- anything other than the mask  
13 with Black Lives Matter on it?

14 A. For that meeting?

15 Q. Yes.

16 A. I believe I was wearing one of the necklaces.

17 Q. And was -- do you recall if anyone else was wearing any  
18 necklaces or pins or masks during that meeting?

19 A. I don't recall. I know it was talked about, and I know  
20 some of the people in the meeting had worn it outside of that  
21 meeting, but I don't recall if they wore it specifically to  
22 that meeting.

23 JUDGE SOTOLONGO: And this is based on your personal  
24 observations that you had seen other people wearing this type  
25 of messaging prior to the meeting?

1 THE WITNESS: Correct.

2 JUDGE SOTOLONGO: Okay.

3 Q. BY MR. PETERSON: Did you remove the mask when Scott told  
4 you that it was not permitted?

5 A. So by the time of this meeting I was actually off the  
6 clock. So this was of my own time. So I didn't remove it at  
7 that time because I wasn't on the clock at Whole Foods. So I  
8 was of my own free will at that point. But I did stop wearing  
9 it to work.

10 Q. And did you -- after this meeting, did you, did you  
11 continue wearing other forms of Black Lives Matter messaging?

12 A. Yes. After this meeting I did still wear the pins and the  
13 necklaces because I -- we were told that that was still  
14 allowed.

15 Q. At any point were you told by any managers after that  
16 meeting anything about what you were wearing that had Black  
17 Lives Matter on it?

18 A. Yes. So I had actually -- so I had put in my notice to  
19 leave Whole Foods, and I want to say within a week prior to  
20 that we were told was the day that they were finally going to  
21 start cracking down on the pins, and that they had finally  
22 found a way to relate that to the dress code.

23 Q. When you say we were told, can you -- when -- I guess you  
24 gave the timeframe, but how were you told that?

25 A. Verbally through different members of management. They



1 were going around to different employees, and basically saying,  
2 hey, the store leaders --

3 JUDGE SOTOLONGO: Again, why don't you tell us what you,  
4 what you personally were told. Because, again, you're relying  
5 on what other employees were told. Again, I cannot accept that  
6 because it's hearsay technically.

7 THE WITNESS: Okay.

8 JUDGE SOTOLONGO: Obviously, there's been enough testimony  
9 that messages were being received. Why don't you tell us what  
10 you personally were told and by whom and when.

11 THE WITNESS: Yes. So about a week before my last day --

12 JUDGE SOTOLONGO: Your last day was when?

13 THE WITNESS: I have it written down in the affidavit, but  
14 I can't remember. It was the middle of July. I want to say it  
15 was early teens.

16 JUDGE SOTOLONGO: Right.

17 THE WITNESS: I --

18 MR. PETERSON: If the date's important, can we refresh the  
19 witness' recollection --

20 JUDGE SOTOLONGO: Sure.

21 MR. PETERSON: -- the date? Well --

22 JUDGE SOTOLONGO: Okay, well, I'll tell you, we're going  
23 to refresh it later.

24 THE WITNESS: That seems right.

25 Q. BY MR. PETERSON: -- last day in July?

1 A. Yeah.

2 Q. Stipulate that it was July 12th was your last day?

3 A. Yeah. So July 12th was my last day. About a week prior  
4 to that, I remember it was a Monday, but I don't remember the  
5 specific date, I was told by Jamie, who was our store leader,  
6 that they would be cracking down on the masks and the pins, and  
7 I was told that he would circle back. This was at the very  
8 beginning of my shift. So seven o'clock in the morning.

9 JUDGE SOTOLONGO: Is that the exact wording he used  
10 they're going to be cracking down or is that --

11 THE WITNESS: Yeah.

12 JUDGE SOTOLONGO: --- is that the exactly the term he  
13 used?

14 THE WITNESS: I believe so, yes.

15 JUDGE SOTOLONGO: Okay.

16 THE WITNESS: And then when he did circle back, we had a  
17 long conversation about why I was wearing it, how I personally  
18 felt on the matter, how I felt it impacted him specifically.  
19 And then I --

20 JUDGE SOTOLONGO: Okay. So why don't you give us a little  
21 more background. When did he circle back? Was that later the  
22 same day? The next day?

23 THE WITNESS: Yes.

24 JUDGE SOTOLONGO: A week later? When was it?

25 THE WITNESS: That was within an hour or two of him

1 initially telling me that they were cracking down.

2 JUDGE SOTOLONGO: Okay. And so who was present in this  
3 second conversation you had with him? It wasn't just -- just  
4 you and him or somebody else was present?

5 THE WITNESS: It was just me and Jamie.

6 JUDGE SOTOLONGO: Okay.

7 THE WITNESS: So me and Jamie had a long conversation. We  
8 were in the front of the store.

9 Q. BY MR. PETERSON: Can you recall who said what?

10 A. I do recall telling him that I thought it was a historical  
11 movement, and I thought that it was wrong of him to act this  
12 way, and that I thought it was ridiculous that even though  
13 Amazon who is our parent company was stating that they were in  
14 favor of the movement, that he was taking a stand against this.  
15 I remember his reasoning was basically he had a job to do. He  
16 had to do that job. So that's what he was doing. That was  
17 pretty much the reasoning I was given. I -- he eventually told  
18 me that he had a phone call to take about an hour into the  
19 conversation, and then he walked away. At the end of my shift  
20 he --

21 JUDGE SOTOLONGO: Okay, wait, wait. There's no question  
22 pending. So if there's another conversation -- I'll tell you  
23 what, let's take a five-minute break.

24 MR. PETERSON: Sure.

25 **JUDGE SOTOLONGO: Let's go off the record for five**

1   **minutes.**

2   **(Off the record from 2:39 p.m. until 2:46 p.m.)**

3           JUDGE SOTOLONGO: All right. I'm sorry for the  
4   interruption. Please proceed.

5   Q.   BY MR. PETERSON: Okay. So you were describing the, the  
6   discussion -- the circle back discussion.

7   A.   Um-hmm.

8   Q.   Anything else you recall about that, about that  
9   discussion?

10   A.   I know we mostly just talked about our personal views on  
11   the issue. We also talked about how Joe's actions, and how our  
12   store being physically connected to a police station tied us in  
13   specifically, and tied Whole Foods into the whole situation.  
14   After our conversation, which he ended by saying he had a phone  
15   call to take, he pulled me into the office at the end of my  
16   shift with Valerie, who was my supervisor, and I was issued a  
17   corrective action.

18           MR. PETERSON: Permission to approach the witness, Your  
19   Honor?

20           JUDGE SOTOLONGO: Yes.

21           MR. PETERSON: I have this marked as General Counsel's 55.  
22   **(General Counsel Exhibit 55 marked for identification.)**

23   Q.   BY MR. PETERSON: Have you had a chance to look at General  
24   Counsel's 55?

25   A.   Yes.

1 Q. Do you recognize it?

2 A. So I did not sign this form. The form that I signed -- it  
3 says here that I signed the wrong form, but I was never told  
4 this while working there. I recognize this form as one of our  
5 corrective actions, but I did not sign this.

6 Q. Did you -- how did the form that you signed differ from  
7 this form?

8 A. It's -- I mean, that was two years ago. So I don't  
9 remember exact specifications, but this looks almost identical.  
10 The only thing that it's missing is a second page which we were  
11 given. We were allowed to write our own statement, which I was  
12 told was common, and I simply wrote the words Black Lives  
13 Matter on mine. I was also told when given my copy or when --  
14 I'm sorry. I was told when I signed it that I was not allowed  
15 a copy. So I have --

16 Q. Who told you that?

17 A. Both Jamie and Valerie and Travis, who was one of the  
18 regional directors was in the store that day. So I actually  
19 clocked out, and I went downstairs, and I double-checked with  
20 him, and he also said it was against store policy to give  
21 copies of corrective actions to the employee.

22 Q. Okay. Circling back a bit to when you got this corrective  
23 -- well, a similar corrective action, what -- how did that  
24 meeting begin? Who said what?

25 A. The actual corrective action?

1 Q. The, yeah, the -- yes.

2 A. So I was at the clock out machine. I hadn't clocked out  
3 yet, but I was standing in front of it about to at the end of  
4 my shift, and Jamie who -- the office is right next door to the  
5 clock out machine, stepped out. Said can you come in here? I  
6 came in, sat down. He grabbed Valerie, who was in the next  
7 room. She came in, and then the three of us sat, and he said  
8 this is your corrective action. It's because you refused to  
9 take off the pin. Is there anything further that you want to  
10 discuss? And I was at the end of a very long shift, and a very  
11 long day, so I said no. I basically said you know how I think  
12 about this. We had that long conversation earlier. I'm just  
13 going to sign this and get this over with, and then I left.  
14 And a big point that I mentioned in the whole process was that  
15 I had already put in notice, and that he was filing corrective  
16 action for somebody who would not work there the following  
17 week.

18 Q. Do you recall anything else about that discussion?

19 A. That specifically? Just that I wanted to get out of there  
20 as soon as I could. I, like I said, I specifically mentioned  
21 that I had already put in notice. So I felt like it was a  
22 waste of everybody's time, but they wanted me to sign this so I  
23 signed it.

24 Q. Do you recall any discussion about a verbal warning?

25 A. I know that the conversation has -- was never noted to me

1 specifically that it was a verbal warning. They just said they  
2 wanted to talk about it, or that they were cracking down on the  
3 rule, and that was the, the wording that I recall for that  
4 conversation. But I was never specifically told this is a  
5 verbal warning, you're going to get a corrective action. I was  
6 just greeted with this corrective action at the end of my  
7 shift.

8 Q. And which conversation are you referring to?

9 A. The one earlier that day, the hour-long conversation I had  
10 with Jamie.

11 JUDGE SOTOLONGO: And in that earlier conversation the one  
12 where you mentioned that Jamie had said to you that they're  
13 going to start cracking down on people wearing Black Lives  
14 Matter -- in that conversation did he tell you you've got to  
15 remove it now or anything like that?

16 THE WITNESS: Not directly. He said that they were asking  
17 people to start removing it, but he did not directly tell me  
18 you have to remove this pin.

19 JUDGE SOTOLONGO: So at no point when you were given this  
20 corrective action -- you had been -- had you been asked to take  
21 off -- is that correct?

22 THE WITNESS: Correct.

23 JUDGE SOTOLONGO: Okay. Go ahead. Okay. In other words,  
24 you hadn't been told unless you remove it now you're going to  
25 get a corrective action?

1 THE WITNESS: That is correct.

2 JUDGE SOTOLONGO: Okay.

3 Q. BY MR. PETERSON: Do you recall any discussion during that  
4 when you received the corrective action about, about whether  
5 you had -- about that issue, about you had not been given a  
6 verbal warning?

7 A. So I asked Jamie why he didn't tell me that it was a  
8 verbal warning, and that the next step would be a corrective  
9 action. I also pointed out the fact that he hired me, and we  
10 had a good repertoire up until that point. And I asked why he  
11 didn't mention that, and he said, oh, I figured it was implied,  
12 and didn't really offer any kind of further explanation.

13 JUDGE SOTOLONGO: I think you probably meant rapport.  
14 Repertoire is --

15 THE WITNESS: Oh, yes, I'm sorry. Yes, right.

16 JUDGE SOTOLONGO: Unless you --

17 THE WITNESS: No.

18 JUDGE SOTOLONGO: -- together somewhere.

19 Q. BY MR. PETERSON: And so that day, that was, that was the  
20 day that apart from the group meetings that you had heard or  
21 where the, the Black Lives Matter was brought up, that was the  
22 first time that you were directly confronted by anyone from  
23 management about what you were wearing?

24 A. Other than the town hall with Scott where I wasn't  
25 directly confronted, but I was asking him about it, other than



1 that it was the first time I, I personally had been confronted  
2 by management.

3 Q. The reports you had heard from other employees, did you --  
4 how did you -- were any of those reports part of the Telegram  
5 chat?

6 A. Um-hmm. Some of the people in that chat were some of the  
7 people that were sent home. At this time, I was to my  
8 knowledge the only person who had received a documented  
9 repercussion for our actions, but a couple of people had been  
10 sent home. I don't know if they were set home with pay or  
11 without pay. I don't have that information. But we did talk  
12 about it in the chat.

13 Q. Do you recall if the corrective action you received also  
14 said TM violated WFM dress code policy?

15 A. I believe it did, yes.

16 MR. PETERSON: Well, I'll move for the admission of  
17 General Counsel's 55.

18 MR. FORMAN: No objection.

19 JUDGE SOTOLONGO: Okay. General Counsel's 55 is admitted.

20 **(General Counsel Exhibit 55 received in evidence.)**

21 JUDGE SOTOLONGO: Now, just to be clear. So you said the  
22 form that you actually signed, you actually signed, it seemed  
23 like -- had a second page for the team member is allowed to  
24 comment.

25 THE WITNESS: Yes. It was a full blind page that just

1 said something to the effect of employee comments here,  
2 something very simple.

3 JUDGE SOTOLONGO: And did you write any comments on that  
4 or just --

5 THE WITNESS: Just the phrase Black Lives Matter, and that  
6 was omitted from this.

7 JUDGE SOTOLONGO: Okay. You didn't say anything like this  
8 is not fair or whatever, you simply said --

9 THE WITNESS: Just that.

10 JUDGE SOTOLONGO: -- Black Lives Matter? And then you  
11 signed that page?

12 THE WITNESS: I don't recall which page I signed.

13 JUDGE SOTOLONGO: Okay.

14 THE WITNESS: I know that I double-checked it to make sure  
15 that all the signatures were there, and I did work more shifts  
16 after that. So I don't know, I don't know why I was never  
17 approached --

18 JUDGE SOTOLONGO: Okay.

19 THE WITNESS: -- to say that I signed the wrong form, but  
20 that's what I recall of that.

21 MR. PETERSON: And for the record, this was produced  
22 pursuant to subpoena.

23 JUDGE SOTOLONGO: Yeah. That was my guess, yes. So this  
24 is the form in other words -- this is the form that is  
25 contained in the formal records?

1 MR. PETERSON: Yes, Your Honor.

2 JUDGE SOTOLONGO: Very well.

3 MR. PETERSON: Permission to approach the witness.

4 JUDGE SOTOLONGO: Go ahead.

5 MR. PETERSON: General Counsel's 53.

6 Q. BY MR. PETERSON: Go ahead and look through that exhibit,  
7 and let me know if you recognize anything in it.

8 A. These are photos from the, the protest that we organized  
9 on June 21st.

10 Q. Are you depicted in any of those photographs?

11 A. Yes. I am -- on page 2, the image at the bottom. I'm  
12 wearing jeans and a black shirt -- the left corner. I might be  
13 in the top one, but I don't see myself immediately. I think  
14 I'm further in the crowd. And I'm not in the one on page 3.

15 JUDGE SOTOLONGO: So you're the one holding up the sign  
16 about Bezos that -- is that correct?

17 THE WITNESS: Yes, correct.

18 JUDGE SOTOLONGO: Okay.

19 Q. BY MR. PETERSON: Do you recognize the website on the  
20 first page?

21 A. I believe this is where the images were posted by the  
22 photographer.

23 Q. Were you -- yeah. Had you seen that website? Had you had  
24 occasion to look at that website?

25 A. Yeah. I looked at it right after they were posted. I

1 don't recall the exact date. I want to say it was within a  
2 week of the protest.

3 Q. The first page that -- the comments on the first page you  
4 mentioned some speeches.

5 A. Yes. I was not one of the speakers, but there were a few  
6 people that spoke out about this issue.

7 Q. Do you recall any of the topics that the speakers  
8 addressed?

9 A. A lot of it was talking about concerns in the workplace.  
10 We voiced why we were upset about Joe feeding the police  
11 officers. We voiced how we felt alone. Our management wasn't  
12 standing with us in this issue or in any of the issues. And we  
13 also had some people that were not a part of the store that  
14 came up and spoke, and also talked about the Black Lives Matter  
15 movement as a whole, and why we felt it specifically impacted  
16 marginalized communities. And as essential workers we tied in  
17 COVID to that as well, and highlighted how a lot of essential  
18 workers especially in that community are members of the black  
19 community.

20 Q. The caption references speakers described other racist  
21 practices during the hour-long rally.

22 A. Um-hmm.

23 Q. Do you recall any racist practices that were spoken about?

24 A. I know one of my co-workers talked about how they were  
25 fired. That's the person that posted the infographic initially

1 about Joe Burton.

2 MR. FORMAN: I'm going to object, relevance. That has  
3 nothing to do with the issue of wearing the BLM, the co-workers  
4 -- BLM other than Ms. Kelly.

5 MR. PETERSON: Well, objecting to racism is a protected  
6 --

7 MR. FORMAN: The issue, Your Honor, is wearing Black Lives  
8 Matter and the purpose of that. This employee was fired for --  
9 they wore Black Lives Matter. Never wore Black Lives Matter to  
10 the workplace. So the fact that they were talking about why  
11 they thought their termination was unfair is a mini-trial about  
12 their termination, the reasons they were fired. Has nothing to  
13 do with the issue we're here for.

14 JUDGE SOTOLONGO: Okay.

15 MR. PETERSON: Yeah. I wasn't asking about the reasons  
16 that this person was fired unless --

17 Q. BY MR. PETERSON: Was the person they fired black?

18 A. No.

19 Q. Okay. So who was describing -- do you -- was that person  
20 describing racist practices or were other speakers describing  
21 racist practices?

22 A. I know they mostly spoke about their firing. So I'll pass  
23 on that. But I know other employees who were people of color  
24 were speaking out about their experiences with customers. I  
25 know other people had experiences with our management saying

1 racist things, and they spoke up about that as well.

2 Q. Any more details you recall?

3 A. I don't remember specifics of any of the speeches. I know  
4 we highlighted a lot of how we felt like this tied in to our  
5 store specifically because of how the demographics of our store  
6 was, and how the black community ties into us as essential  
7 workers.

8 Q. And what was that -- what's the demographic of your store?

9 A. Most of our store -- I don't know specific percentages,  
10 but most of our store was black. Most of the employees, I  
11 should say.

12 Q. After that, after being issued the corrective action, did  
13 you, did you continue to -- did you work any more shifts before  
14 July 12th? I guess between July 8th and July 12th.

15 A. Yes. So after getting this corrective action, I decided  
16 to take off the pin because I was told that specifically was  
17 the thing that they were coming against. So I stopped wearing  
18 the pin. I did continue to wear a necklace because at that  
19 time they did not have a rule against it, and I wanted to work  
20 out the last of my shift to be able to say goodbye to some of  
21 my co-workers.

22 Q. And you were able to do that wearing the -- which necklace  
23 were you wearing?

24 A. I believe I was wearing one of the copper necklaces with  
25 the BLM written out.

1 Q. And did any managers confront you about that during those  
2 last few days of your work?

3 A. No.

4 MR. PETERSON: Nothing further.

5 JUDGE SOTOLONGO: All right. Mr. Forman.

6 MR. FORMAN: I would like the Jencks materials, and an  
7 opportunity to review them, please.

8 JUDGE SOTOLONGO: Sure. How long is the affidavit?

9 MR. PETERSON: It's a seven-page affidavit.

10 JUDGE SOTOLONGO: How much time you going to need,  
11 Mr. Forman?

12 MR. FORMAN: I know what I'd like. I'm mindful that you  
13 would like to conclude today. So --

14 JUDGE SOTOLONGO: Yes.

15 MR. FORMAN: -- how about 3:30. 28 minutes.

16 JUDGE SOTOLONGO: That's reasonable.

17 MR. FORMAN: Okay.

18 JUDGE SOTOLONGO: All right. So let's resume at 3:30.

19 **Off the record.**

20 **(Off the record from 3:03 p.m. until 3:31 p.m.)**

21 JUDGE SOTOLONGO: All right, Mr. Forman, please proceed.

22 MR. FORMAN: Thank you, Your Honor.

23 **CROSS-EXAMINATION**

24 Q. BY MR. FORMAN: Good afternoon, Ms. Kelly. My name is  
25 Adam Forman. I go by he and him, and I'm going to ask you a

1 few questions today. Some of them are to clarify some of your  
2 testimony; some of them are to clarify what I understand the  
3 timeline to be, but perhaps I'm incorrect. To be clear, you  
4 worked at the South Street Whole Foods from early August 2019  
5 to mid-July 2020?

6 A. Yes.

7 Q. Okay. And just the South Street store in Philadelphia?

8 A. Correct.

9 Q. Now, I am not from around these parts so I may be asking  
10 you some questions like where 676 is, but that's only because I  
11 don't know. So if you could work with me, I'd appreciate that.

12 A. Um-hmm.

13 Q. You said you were a cashier the whole time?

14 A. Yes. I did a couple other tasks, but I stayed in that  
15 department the whole time.

16 Q. And that's a customer facing role?

17 A. Correct.

18 Q. You said the store leader in early June was Joseph Burton?

19 A. Yes.

20 Q. And ASTL was Jamie Kotmair and Matthew Kowalski?

21 A. Yes.

22 Q. There was a third name Alba, but you don't remember Alba's  
23 last name?

24 A. Albana was her first name, A-l-b-a-n-a, I believe.

25 Q. It is Albana?



- 1 A. Yes.
- 2 Q. There's a typo here. And Albana's last name Baci? Does
- 3 that --
- 4 A. That sounds right, yeah.
- 5 Q. B-a-c-i?
- 6 A. I think so. Now, as a cashier, you were in the front end
- 7 or store support services.
- 8 A. Correct.
- 9 Q. And your team leader was Valerie Johnson?
- 10 A. Correct.
- 11 Q. And Ms. Johnson as a team leader in turn reported up to
- 12 the ASTLs who reported to the STL?
- 13 A. Yes, I believe so.
- 14 Q. Did you have a uniform as a cashier?
- 15 A. Not a strict uniform. When I was hired they told me that
- 16 our dress code was -- I don't recall specifically, but no
- 17 profanity. You couldn't wear sweatpants. I think there were
- 18 things like you couldn't have midriff, and you had to have
- 19 sleeves. But there weren't any, any other specifics.
- 20 Q. So focusing your attention to summer of 2020, did you have
- 21 to wear a Whole Foods apron?
- 22 A. Yes.
- 23 Q. And did that apron have a logo on it?
- 24 A. Yes.
- 25 Q. What logo?

- 1 A. It was the Whole Foods logo.
- 2 Q. And where was that logo located?
- 3 A. I believe it was in the middle of the apron.
- 4 Q. Okay. Approximately what size?
- 5 A. Maybe inch and a half, two inches in diameter. It's a
- 6 circle.
- 7 Q. A nametag or a name?
- 8 A. We did have to wear nametags. We weren't specifically
- 9 told that we had to wear pins, but they were sort of encouraged
- 10 as a fun little extra thing. They were given sometimes as
- 11 rewards for good, good comment cards from customers.
- 12 Q. Were those Whole Foods branded pins?
- 13 A. They didn't have the Whole Foods logo, but they were from
- 14 Whole Foods.
- 15 Q. So Whole Foods approved --
- 16 A. Correct, yes. They're actually patches that were put onto
- 17 a pin for specific reasons.
- 18 Q. Did you have a Whole Foods lanyard?
- 19 A. I don't think we did. I know we had -- we eventually had
- 20 to get a lanyard when we got self-checkouts, which I believe
- 21 wasn't until the summer of 2020. But I think when I was hired
- 22 I don't think we had a lanyard.
- 23 Q. I'm talking in 2020. You were wearing -- you had a
- 24 lanyard?
- 25 A. Yes.

1 Q. And was it branded Whole Foods Market along the lanyard?

2 A. I think it was just a black lanyard. I don't think it had  
3 a Whole Foods branding.

4 Q. Given that we were in the summer of 2020, did you have to  
5 wear a facemask?

6 A. Yes.

7 Q. And did you understand that the rules as you understood  
8 regarding the dress code also applied to facemasks?

9 A. Yes.

10 Q. I want to turn your attention to late May 2020. Do you  
11 recall what happened on May 25, 2020?

12 A. I can't say that I do.

13 Q. Was that the date the police murdered George Floyd?

14 A. That sounds accurate. I don't remember the specific date,  
15 but that sounds about right.

16 Q. And you heard about Mr. Floyd's murder on around that  
17 time?

18 A. Yes.

19 Q. How did that make -- how did that affect you personally?

20 MR. PETERSON: Objection, relevance.

21 JUDGE SOTOLONGO: Sustained.

22 Q. BY MR. FORMAN: I'm a little confused about the timeline  
23 as to the first day you wore the phrase Black Lives Matter or  
24 the acronym BLM to Whole Foods. I believe you testified during  
25 your direct that you thought it was within a week or two after

1 June 1st when Mr. Burton gave food to the police. Do you  
2 recall that testimony?

3 A. Yes. I don't recall the specific date that I started  
4 wearing them though.

5 Q. I'm looking at the -- do you recall giving the Board an  
6 affidavit?

7 A. Yes.

8 Q. And you signed that in July, late July 2020?

9 A. Um-hmm.

10 Q. Was your memory of the events at issue better back then  
11 than it is today?

12 A. Yes.

13 Q. Okay. In the affidavit, you talk about -- the first time  
14 I see any mention of Black Lives Matter messaging at work was  
15 you said an employee stitched Black Lives Matter into their  
16 Whole Foods mask. Was that employee you?

17 A. Yes.

18 Q. Did anyone else stitch Black Lives Matter into their mask?

19 A. I don't think anyone stitched it, but I do know other  
20 people had masks that said it.

21 Q. Amber Caruthers had a stitched Black Lives Matter mask,  
22 didn't she?

23 A. I don't actually know who that is.

24 Q. Okay. ATL from bakery.

25 A. We may have never crossed paths.

1 Q. Do you know if Amber Caruthers was one of the team members  
2 that left work on June 19, 2020?

3 A. I don't know.

4 Q. You said I made my pin and mask. I made a pin using  
5 copper wire that I bent into the shape of letters BLM, and I  
6 wore it on June 19th. That's the first date you mentioned  
7 wearing it. Is it possible the first date you wore any BLM or  
8 Black Lives Matter messaging in the workplace was June 19,  
9 2020?

10 A. I don't think that was the first. I think I did wear it  
11 earlier than that, but I definitely did also wear it on that  
12 date.

13 Q. Were you the first to wear it, or did you wear it on the  
14 date that your other -- that some other team members wore it?

15 A. At that point, I don't believe it was the first date. I  
16 don't think I was the first person. I believe another member  
17 of my store I saw wearing one, and I went up to them, and I  
18 asked them where they got it, and they pulled one out of their  
19 pocket, and they handed it to me. I remember putting it on  
20 then.

21 Q. Do you know if anyone in leadership saw you wearing it?

22 A. I'm sure they did. I talked to them every day. I never  
23 got a comment on it until what I testified, but I'm sure they  
24 saw it.

25 JUDGE SOTOLONGO: What was it that you saw this other team

1 member wearing that you got a copy of, and you -- was it a  
2 mask? Was it a --

3 THE WITNESS: It was a pin. I'm pretty sure it was in  
4 very early June.

5 Q. BY MR. FORMAN: Did the pin come from Kayleb Candrilli?

6 A. No.

7 Q. You're familiar with that pin, right?

8 A. Yes.

9 Q. The black about an inch, in and a half diameter --

10 A. Yes.

11 Q. -- white words Black Lives Matter?

12 A. I believe I was making mine before Kaleb had those pins.

13 Q. Okay. I know it's been over two years now, but I want to  
14 talk to you about what the world was like in the immediate  
15 aftermath of George Floyd's murder. Do you recall that there  
16 were protests in Minneapolis?

17 A. Yes.

18 Q. There were also protests in Philadelphia, right?

19 A. Yes.

20 Q. Did you attend any protests independent of what you  
21 testified about on June 21st? Did you attend any Black Lives  
22 Matter protests?

23 A. I did.

24 Q. How many?

25 MR. PETERSON: I'm just going to raise a standing

1 objection.

2 JUDGE SOTOLONGO: Okay. Overruled. Go ahead, you can  
3 answer.

4 THE WITNESS: I believe I attended two.

5 Q. BY MR. FORMAN: Did you understand that there were also  
6 Black Lives Matter protests taking place directly outside or  
7 within close physical proximity to the store on South Street?

8 A. I'm sorry?

9 Q. Throughout the summer of 2020.

10 A. I'm sorry. Can you reask that question?

11 Q. Yes. Did you understand that there were Black Lives  
12 Matter protests taking place directly outside or within close  
13 geographic proximity to the South Street store?

14 A. Define close.

15 Q. I don't know the area.

16 A. I mean, they were within Philadelphia. I know that. I  
17 wouldn't consider them close to the South Street store  
18 personally.

19 JUDGE SOTOLONGO: So you recall there was no protests,  
20 Black Lives Matter related protests in the immediate vicinity  
21 of the store?

22 THE WITNESS: To my knowledge, the closest one that I was  
23 aware of was I want to say at least 10 blocks away.

24 Q. BY MR. FORMAN: Do you recall when you attended the two --  
25 approximately when you attended the two Black Lives Matter

1 protests you attended?

2 A. I know I attended the one on June 1st where the incident  
3 on 676 happened. I was not on 676 when that happened, but I  
4 was at that protest.

5 JUDGE SOTOLONGO: When you say 676, what do you mean?

6 THE WITNESS: That's the, I think, the Vine Street  
7 Expressway. It's --

8 JUDGE SOTOLONGO: It was an expressway?

9 THE WITNESS: Yes.

10 JUDGE SOTOLONGO: Okay.

11 Q. BY MR. FORMAN: What was the incident?

12 A. So, again, I was not there. So I can't speak as a witness  
13 to that, but the march which from what I did witness, and from  
14 every testimony I've heard was peaceful, was guided onto 676 by  
15 the police forces who had barricades up. And then basically we  
16 -- they got to a point where they were under a tunnel  
17 barricaded in, and then teargas was thrown.

18 Q. And I think you indicated that at least one fellow co-team  
19 member was there?

20 A. Yes. I saw -- it wasn't a coordinated effort, but just  
21 because we were friends, I saw a couple people that I worked  
22 with before that incident happened at the same march who told  
23 me later that they were there when that happened.

24 Q. Were you wearing any of the Black Lives Matter pins or  
25 jewelry that you discussed today?



- 1 A. No.
- 2 Q. Were you wearing any Black Lives Matter accoutrement?
- 3 A. No.
- 4 Q. Were you carrying a sign?
- 5 A. No.
- 6 Q. Did you see other people carrying signs?
- 7 A. Yes.
- 8 Q. Some of the signs say Black Lives Matter?
- 9 A. I believe so, yes.
- 10 Q. No justice, no peace?
- 11 A. Yeah, that sounds familiar.
- 12 Q. I Can't Breathe?
- 13 A. Yeah.
- 14 Q. Defund the police?
- 15 A. Um-hmm.
- 16 Q. Were there counter protestors in the area?
- 17 A. Not that I saw.
- 18 Q. No one carrying a sign that said MAGA or All Lives Matter
- 19 or Blue Lives Matter?
- 20 A. Not at that instance.
- 21 Q. Let's talk about the other protest. Were there chants as
- 22 well as signs?
- 23 A. Um-hmm.
- 24 Q. Chants similar to what the signs said that we just
- 25 discussed?

- 1 A. Um-hmm.
- 2 Q. You have to answer vocally.
- 3 A. Yes.
- 4 Q. When was the other protest you attended?
- 5 A. I don't remember the specific date. I believe it was
- 6 after I left Whole Foods though. I want to say it was in July.
- 7 I know it was the biggest one of the Philadelphia protests, and
- 8 it made news, and I think I heard a quote -- 10,000 people or
- 9 something.
- 10 Q. I think we heard about that earlier tens of thousands of
- 11 people were there?
- 12 A. Yeah, that sounds right, yeah.
- 13 Q. Similar chants and signs as to what were at June 1st?
- 14 A. Yes.
- 15 Q. Did you carry a sign there?
- 16 A. No.
- 17 Q. Am I correct in understanding that the Philadelphia Police
- 18 Department has a substation connected to the same building as
- 19 the South Street store?
- 20 A. Correct.
- 21 Q. Both locations share the same parking structure which is
- 22 above the store?
- 23 A. Correct.
- 24 Q. And the substation?
- 25 A. Correct.

1 Q. Now, I understand that the protests were mostly peaceful,  
2 but were you aware that at times they became violent?

3 A. Yes, I was aware that that had happened.

4 Q. I think you indicated in your affidavit that you  
5 understood there was looting?

6 A. Yes.

7 Q. Fires?

8 A. Yes.

9 Q. Mayhem?

10 A. Yes.

11 Q. Was there -- were you aware of whether there was violence  
12 that was aimed at the police substation adjoined to the South  
13 Street store?

14 A. Not to my knowledge.

15 Q. Now, other than June 1st, were you aware of whether there  
16 were reports that the police were instigating some of the  
17 violence?

18 MR. PETERSON: Objection, relevance.

19 JUDGE SOTOLONGO: What is the relevance, Mr. Forman?

20 MR. FORMAN: I think we're going to get to that in a  
21 moment, Your Honor, when we talk about Mr. Burton, and how it  
22 made this particular --

23 JUDGE SOTOLONGO: All right. I'll give you some leeway.  
24 Go ahead.

25 THE WITNESS: Sorry. Can you repeat the question?

1 Q. BY MR. FORMAN: You understood there were reports the  
2 police were actually instigating some of the violence during  
3 some of these protests?

4 A. There may have been reports of that. I hadn't been  
5 witness to that specifically.

6 Q. Other than June 1st were you --

7 A. Correct.

8 Q. Okay.

9 A. I should say prior to June 1st.

10 Q. After June 1st was there more reports of the police  
11 instigating?

12 A. I know, you know, it, it would be hearsay. Saw things  
13 online and people mentioning that that was happening, but I  
14 don't have any specific instance to reference.

15 Q. You produced some documents to the General Counsel in  
16 response to our subpoena which the general counsel produced to  
17 us. There was like 10 pages. Are you familiar with those  
18 generally?

19 A. You'd have to be more specific.

20 Q. I'm specifically asking if you prepared a chronology or a  
21 timeline?

22 A. Oh, I -- there was a timeline prepared with our, our group  
23 chat. I didn't specifically prepare that, but I did give that  
24 in as part of the subpoena, yes.

25 Q. Did you review that timeline?

1 A. Yes.

2 Q. To the best of your knowledge was it accurate in terms of  
3 dates and events things happened?

4 A. Yes.

5 Q. And you're familiar with it?

6 A. Yes.

7 Q. I'm going to ask you some questions, and see if you can  
8 remember some of these events. If I need to refresh your  
9 memory, I will, but hopefully you'll remember. Do you know  
10 when the timeline was prepared?

11 A. My guess would be July, but I, I -- I'm not positive.

12 Q. Of 2020?

13 A. Correct, yes.

14 Q. The first date I want to discuss on the timeline was  
15 identified as an event that happened between May 31, 2020, and  
16 early June of 2020 where the timeline indicates that there were  
17 evacuations that persisted for multiple consecutive days in  
18 response to protests and demonstrations against police  
19 brutality. Do you recall that?

20 A. Correct.

21 Q. And that meshes with your memory that during that  
22 timeframe there were indeed evacuations on multiple consecutive  
23 days in response to protests and demonstrations against police  
24 brutality?

25 A. I think evacuations might be a bit of a strong word for

1 that, but we did close the store early.

2 Q. And that's what I want to talk about. But it was because  
3 of protests and demonstrations against police brutality?

4 A. Yes. Also the city-wide curfew was in effect as well at  
5 that time.

6 Q. Okay. We'll get to that also. I believe that entry also  
7 mentioned that there were five consecutive shutdowns or  
8 closures. Does that mesh with your memory of the number?

9 A. I don't recall the exact number, but I know there were  
10 multiple days in a row. So that sounds right.

11 Q. Okay. And that was my next question. Were they  
12 shutdowns, early closures or a combination?

13 A. I don't remember there being any day that we were shut  
14 down for the full day, but I know there were multiple days  
15 where we closed early.

16 Q. Okay. And you don't recall the dates other than they were  
17 sometime between May 31 and early June of 2020?

18 A. Correct, yes.

19 Q. Do you know if the dates -- you mentioned the curfew. Was  
20 that the curfew that the Mayor or Philadelphia issued?

21 A. Yes.

22 Q. And do you know if these early closures coincided with  
23 the, with the dates that the Mayor issued curfews?

24 A. I believe so. I think there were a couple dates where  
25 they closed early to make sure that everybody got home before

1 the curfew.

2 Q. And in your prior time at the company back to August of  
3 2019, were you ever aware of the store closing early?

4 A. I think there might have been one time where we had a  
5 snowstorm, and they may have closed a couple hours early. But  
6 if that was the -- I think I remember hearing about that. I  
7 never worked where we closed early before that.

8 Q. Pretty unusual circumstances?

9 A. Correct.

10 Q. Now, with respect to the evacuations or excuse me, the  
11 closures in response to protests and demonstrations against  
12 police brutality, do you know at approximately what time these  
13 protests and demonstrations took place?

14 A. I don't recall that.

15 Q. Were team members and/or customers in the store at the  
16 time?

17 A. At the time of closures?

18 Q. Yeah.

19 A. Yes.

20 Q. How about the time of any protestor demonstrations?

21 A. I mean, I would say so. There were a lot of protests and  
22 demonstrations. So there's definitely at least one instance of  
23 them overlapping with people being in the store.

24 Q. And on the timeline where it talks about protests and  
25 demonstrations being against police brutality, am I correct in

1 understanding that was a protest against the unjustified  
2 killing of African-Americans and police misconduct?

3 A. Yes.

4 Q. And that's what the Black Lives Matter protestors were  
5 protesting in the summer of 2020?

6 A. That was a big part of what they were protesting, yes.

7 Q. At the June 1st protest you attended or the July protest  
8 you attended that you talked about, about a minute ago, did you  
9 hear anyone ever protest the Whole Foods Market?

10 A. Other than the protest that we organized on the 21st, I  
11 never heard anything about Whole Foods Market at the other  
12 protests.

13 Q. Okay. Isn't it true that the protests were part of an  
14 international uprising against white supremacy and police  
15 terror following the deaths of George Floyd, Breonna Taylor and  
16 Arbery?

17 MR. PETERSON: Objection, standing objection, relevance.

18 JUDGE SOTOLONGO: What's the basis for your objection?

19 MR. PETERSON: Well, relevance is one, and the witness'  
20 capacity to answer.

21 JUDGE SOTOLONGO: Yeah.

22 MR. FORMAN: I can, I can refresh the witness' memory.

23 JUDGE SOTOLONGO: This is what's -- the affidavit?

24 MR. FORMAN: It's in one of the circulars that -- we'll  
25 get to that in a moment. Let's come back to that.



1 Q. BY MR. FORMAN: When you participated on June 1, and in  
2 July 1 was protesting, what were you protesting?

3 A. I was there specifically because of the unjust murders,  
4 and I also because of people in my family and people in my life  
5 experienced what the systemic oppression of the black community  
6 really does to people. So that was a part of why I was out  
7 there.

8 Q. You said to the black community; did I hear that right?

9 A. Yes.

10 Q. So that would be people within Philadelphia, the State of  
11 Pennsylvania, the whole country, the world?

12 A. I would say the country. The world is kind of a grander  
13 issue, but this was specifically on a national level.

14 Q. But all African-American people in the country?

15 A. Yes.

16 Q. And I think you indicated on direct that the pin you're  
17 wearing has the name, names of African-Americans killed. I  
18 can't see your pin. Can you read into the record the names on  
19 there?

20 A. Yeah. So some of them are a little blurry. But Ahmad  
21 Arbery is on here; Breonna Taylor -- excuse me, Breonna Taylor,  
22 George Floyd. There is -- let's see. Freddy Gray, Terence  
23 Crutcher, Philando Castile, Laquan McDonald, Michael Brown. I  
24 can't read the ones at the bottom. And Sean Read and Sandra  
25 Bland.

1 Q. And the common theme behind all those is that they were all  
2 individuals unjustly killed by individuals?

3 A. By police officers, yes.

4 Q. Okay. Is that one of the pins you wore to Whole Foods  
5 Market?

6 A. Yes.

7 Q. Did any of your other teammates, team members wear a pin  
8 like that at Whole Foods Market?

9 A. Yes.

10 Q. Do you remember how many?

11 A. I don't recall for this specific pin, no.

12 Q. I want to talk about another entry in your timeline. It  
13 was also identified as having taken place between the May 31st  
14 and June 20, 2020, time period where it indicates that due to  
15 evacuations the store was boarded up overnight with plywood.

16 Do you recall the store being boarded up overnight with  
17 plywood?

18 A. Yes.

19 Q. And when you say when the -- do you know if when the  
20 summary says store it means the South Street store?

21 A. Yes.

22 Q. And what's your understanding of what boarded up meant?

23 A. So I wasn't working when this happened, but I lived in the  
24 area, and I walked by, and I just saw plywood on the windows.

25 Q. Were all the windows covered?

1 A. I think so. At least all the ones that were on the ground  
2 floor. I can't recall if they had -- they had a second level  
3 which was our offices, and I can't recall if they were boarded  
4 up or not.

5 Q. What about the entrance?

6 A. I think that was boarded up, yeah.

7 Q. Do you know when the store started boarding up windows  
8 based on living in the area and walking around?

9 A. I don't know the exact date of that, no.

10 Q. Do you know for how many days the store boarded up its  
11 windows?

12 A. I don't know exactly. I want to say it was a few days;  
13 maybe a week at most.

14 Q. Do you know why the store boarded up the windows?

15 A. Because other stores in Philadelphia had been looted, and  
16 they were concerned that that was going to happen to them.

17 Q. Okay. I want to jump forward to June 1, 2020. According  
18 to your affidavit, your understanding that was -- is that at  
19 about 12 noon on June 1, 2020, because of looting taking place  
20 at Philadelphia a police officer came in the store, and talked  
21 to Joe Burton?

22 A. Yes.

23 Q. And your understanding is that the officer told Mr. Burton  
24 that there were fires nearby, and the officer suspected  
25 activity would come to the South Street store?

1 A. That is what I was told. Again, I wasn't there at that  
2 moment. So I don't know what was spoken, but I was told that  
3 that's what the police officer told Joe.

4 Q. Is your understanding that Mr. Burton then announced that  
5 all employees and customers should leave the store?

6 A. Yes.

7 MR. PETERSON: Objection, foundation, the witness'  
8 knowledge.

9 MR. FORMAN: I'm reading from the witness' affidavit.

10 JUDGE SOTOLONGO: Overruled. You knew that -- what was  
11 the question again?

12 Q. BY MR. FORMAN: That Mr. Burton announced that the  
13 employees and customers needed to leave the store on June 1st?

14 A. Yes.

15 JUDGE SOTOLONGO: Were you there when it happened?

16 THE WITNESS: No.

17 JUDGE SOTOLONGO: You heard it from other people?

18 THE WITNESS: Yes.

19 Q. BY MR. FORMAN: And your understanding -- let me back --  
20 go back to the chronology. So the chronology indicates that on  
21 June 1, 2020, Mr. Burton constructed a wheeled cart of food and  
22 water during the first of many store evacuations in response to  
23 Philadelphia protests against police brutality; is that right?

24 A. Yes.

25 Q. You were scheduled on June 1st, but you did not work?

1 A. Correct.

2 Q. Did you take the day off?

3 A. Yes.

4 Q. And while Mr. Burton was engaged in this conduct, I think  
5 you indicated you were out protesting at a Black Lives Matter  
6 protest on 676?

7 A. I was not on 676, but that was the same protest --

8 Q. That protest --

9 A. Yes, correct.

10 Q. Thank you. Now, the chronology also indicates that the  
11 Police Department officers were going to be stationed on the  
12 rooftop deck of the store overnight during the protest?

13 MR. PETERSON: Objection. Calls for hearsay.

14 MR. FORMAN: It's her chronology.

15 Q. BY MR. FORMAN: If you remember.

16 MR. PETERSON: It could be -- I mean, something in her  
17 affidavit could still be hearsay. So that's my foundation  
18 objection, and hearsay objection.

19 JUDGE SOTOLONGO: Overruled.

20 THE WITNESS: Again, I did not witness this, but if I put  
21 that in my affidavit, then I'm sure somebody told me that that  
22 was what they were planning to do.

23 Q. BY MR. FORMAN: I think you indicated on direct that when  
24 you learned that Mr. Burton, I think you said, fed the cops,  
25 was that the right phrase? When you learned that Mr. Burton

1 fed the cops you were outraged. That was your word?

2 A. Yes.

3 Q. I think you indicated that many of your co-team members  
4 were outraged as well?

5 A. Yes.

6 Q. And the reason that you were outraged was that  
7 Mr. Burton gave food and water to the police at a time when  
8 people were marching en masse protesting police violence and  
9 brutality towards African-Americans, right?

10 A. In the immediate moment that was why I was outraged, yes.

11 Q. And you also believed that providing food and water to the  
12 police Mr. Burton was essentially speaking for the entire South  
13 Street store, taking the side of the police over the Black  
14 Lives Matter protestors?

15 A. That is what we believed, yeah.

16 Q. Isn't it true that on June 1 you believed that there were  
17 actually very few looters, and that the police were the ones  
18 who were instigating the situation?

19 A. for that specific moment, yes. I didn't hear any word of  
20 looters on that day. So to my knowledge, yes, that is correct.

21 Q. That was the message that you shared on your publicly  
22 accessible Facebook page on June 1, 2020, right?

23 A. Yes.

24 Q. Ms. Kelly, do you maintain a presence on the social media  
25 platform Facebook?

1 A. Not at this time, no.

2 Q. Did you during the summer of 2020?

3 A. I believe so.

4 Q. And was it public accessible to anyone? Were certain  
5 posts made publicly accessible to anybody?

6 A. I know I had a Facebook that I had private settings on. I  
7 know that those rules change pretty frequently. So to my  
8 knowledge they were private, yeah.

9 MR. FORMAN: May I approach, Your Honor?

10 JUDGE SOTOLONGO: Yes.

11 Q. BY MR. FORMAN: I handed you a document which has been  
12 marked for identification as Respondent 59.

13 **(Respondent Exhibit 59 marked for identification.)**

14 Q. BY MR. FORMAN: I'd ask you take a look at it, and let us  
15 know if you recognize this as a post that you posted on your  
16 Facebook page on June 1, 2020?

17 A. Um-mm.

18 Q. I'm sorry. Verbal.

19 A. Yes.

20 Q. And why were you sharing with people that you were  
21 connected with Facebook to tell their relatives and friends  
22 what was happening on June 1st?

23 A. Because I had spoken to a relative who their only way of  
24 knowing what was happening right now or at that moment was on  
25 the news. And as a person who was witnessing what was

1 happening live in front of me, I had a very different view than  
2 she did, and that struck a chord with me specifically.

3 Q. And you wrote that the police are instigating, and the  
4 people that aren't here and don't have people here on social  
5 media are under the impression that the National Guard is going  
6 to bring order. That goes to what you just said; you wanted to  
7 give your first witness account?

8 A. Yes.

9 MR. FORMAN: I'll move for the admission of R-59.

10 MR. PETERSON: I object on relevance grounds. And if I  
11 can just *voir dire* for one second.

12 JUDGE SOTOLONGO: Okay, you can *voir dire*.

13 ***VOIR DIRE***

14 Q. BY MR. FERRELL: This is -- is this one of the -- one of  
15 your Facebook posts?

16 A. Yes.

17 Q. And you believed the post was private?

18 A. I thought so. I guess I had to have made this public if  
19 everybody had access to it, but I was not on the assumption  
20 that it was.

21 Q. Your intent was to share it with your personal followers?

22 A. Correct.

23 MR. PETERSON: And, yeah, so I object on relevance, Your  
24 Honor. This happened on June 1st. This predates the  
25 activities at issue here other than Joe Burton's feeding the



1 police. The employees hadn't been wearing masks yet at this  
2 time.

3 MR. FORMAN: Your Honor, I believe the testimony on the  
4 record is that June 1st was the triggering date -- Joe Burton  
5 started all this. And as far as its authenticity, the witness  
6 has authenticated it. It was made public on her page, and it  
7 was on the very date and time of Joe Burton's activities.

8 JUDGE SOTOLONGO: All right, the --

9 MR. PETERSON: The private activities of these employees  
10 is not --

11 JUDGE SOTOLONGO: All right. Respondent's 59 is admitted.

12 **(Respondent Exhibit 59 received in evidence.)**

13 Q. BY MR. FORMAN: Okay. I want to talk about a next event  
14 on the chronology which occurs on June 5, 2020, and it  
15 indicates that there's a call-in graphic regarding Joe Burton  
16 feeding the PPD that begins to circulate. First question for  
17 some of us in this room that aren't as tech savvy, what's a  
18 call-in graphic?

19 A. So this was just a graphic that was explaining what had  
20 happened, and asking people to call in. We had our phone lines  
21 for the store, and call in and basically ask why that was  
22 happening.

23 Q. Did you prepare the call-in graphic?

24 A. No.

25 Q. But you had -- had you seen a copy of it?

1 A. Yes.

2 Q. Did you circulate the call-in graphic on your social media  
3 platform?

4 A. I did share it, yes.

5 Q. Social media and text message or just social media?

6 A. Just social media, and that was on a private page.

7 Q. I think I saw in your affidavit you have an Instagram --

8 A. Correct, correct.

9 Q. Is that where you shared it?

10 A. Correct.

11 MR. FORMAN: May I approach, Your Honor?

12 JUDGE SOTOLONGO: Sure.

13 MR. FORMAN: I've handed you a copy of what's been marked  
14 as Exhibit 60 for identification.

15 **(Respondent Exhibit 60 marked for identification.)**

16 Q. BY MR. FORMAN: I'd ask you take a look at that, and let  
17 us know if you recognize that as the call-in graphic that you  
18 -- that was referenced on the timeline that was circulated --  
19 that you circulated on or about June 5, 2020.

20 A. Yes.

21 Q. Now, at the top and the bottom of this call-in graphic,  
22 there are words. You see those --

23 A. Um-hmm.

24 Q. -- in the yellow?

25 A. Yes.

1 Q. What do the words mean at the -- ya'all at the bottom?

2 A. May I swear?

3 Q. If that's what they mean.

4 A. It says ya'll know what to mother fucking do. That's what  
5 it stands for.

6 Q. And the what to do, is that meant to have people call  
7 Whole Foods 1-844 number listed here or visit the website  
8 that's listed here?

9 A. Correct.

10 Q. So the thought was that you wanted people to contact Whole  
11 Foods, and tell them no free food for cops?

12 A. It was more to have them ask why this was happening  
13 because we weren't getting any answers, but yes.

14 Q. And it goes on to say that Mr. Burton gave food and water  
15 to police that were beating, teargassing, pepper spraying, and  
16 murdering us; you see that?

17 A. Yes.

18 Q. By us did you mean that the police were beating,  
19 teargassing, pepper spraying, and murdering Whole Foods team  
20 members?

21 A. So, again, I did not make this graphic, but this was meant  
22 as the black community as a whole the police were doing these  
23 things, which Whole Foods members were a part of.

24 Q. Were the police as you understood it also beating,  
25 teargassing, pepper spraying Black Lives Matter protestors?

1 A. Correct.

2 Q. And the murdering I think we talked about. That was --  
3 those are the unarmed African-Americans including the people on  
4 the pin you just read?

5 A. Correct.

6 Q. Now, just above the words tell Whole Foods Market, there  
7 is a pound sign, which I believe is a hashtag, and it says  
8 dress code; is that right?

9 A. Correct.

10 Q. Would you agree with me that the police -- that the Black  
11 Lives Matter protestors were protesting the very conduct that's  
12 described in this graphic?

13 A. Yes. I would agree with that.

14 Q. Okay. And was that the connection between hashtag Black  
15 Lives Matter and the police?

16 MR. FORMAN: The Respondent would move for entry of R-60.

17 JUDGE SOTOLONGO: Any objection?

18 MR. PETERSON: Quick *voir dire*.

19 JUDGE SOTOLONGO: Okay. Go ahead.

20 ***VOIR DIRE***

21 Q. BY MR. PETERSON: Do you know what date you posted this?

22 A. I want to say this was also within a week because I know  
23 we didn't find out about Joe feeding the cops until two or  
24 three days. It was a few days after it actually happened  
25 before any of us -- I'm sorry -- before I found out, I should

1 say. And then this was within a couple days after that.

2 JUDGE SOTOLONGO: So this was the first week of June --

3 THE WITNESS: Yes.

4 Q. BY MR. PETERSON: Was this before or after you or anyone  
5 you observed as wearing the Black Lives Matter messaging at  
6 work?

7 A. I believe this was before.

8 MR. PETERSON: No objection.

9 JUDGE SOTOLONGO: All right. Respondent's 60 is admitted.

10 **(Respondent Exhibit 60 received in evidence.)**

11 MR. FORMAN: And just only because I'm a stickler for  
12 timelines, Your Honor.

13 Q. BY MR. FORMAN: I'm looking at the timeline. Was this the  
14 first call-in graphic; do you know, that was circulated?

15 A. The one in front of me currently?

16 Q. Yes, ma'am.

17 A. Yes. To my knowledge this was the first graphic.

18 Q. So it could have been on June 5th; you just don't remember  
19 as you sit here today?

20 A. That is correct.

21 Q. Okay. Ms. Kelly, would you agree that the discourse  
22 around the phrase Black Lives Matter has been uncivil at times?

23 MR. PETERSON: Standing objection.

24 JUDGE SOTOLONGO: Overruled.

25 THE WITNESS: I would say the discourse as a whole has

1 been occasionally uncivil, but across the board I would say  
2 that it's mostly been civil.

3 Q. BY MR. FORMAN: I think you indicated there were some  
4 instances within the store where there was some uncivil conduct  
5 targeted at team members who were displaying the phrase Black  
6 Lives Matter in the workplace.

7 A. That was a, that was a miscommunication I believe.  
8 Because that was -- people were targeting black employees while  
9 other employees were wearing Black Lives Matter merchandise.  
10 That wasn't necessarily they were targeting people wearing the  
11 merchandise. They were targeting black employees.

12 Q. I think the timeline indicates that many people called the  
13 South Street store to express their displeasure with  
14 Mr. Burton feeding the cops at a time when thousands of people  
15 were protesting police brutality.

16 A. I have no idea how many people call. I actually did not  
17 make that timeline.

18 Q. Okay.

19 A. I believe there were calls, but I was not responsible for  
20 the phone so I can't testify to that

21 Q. Did you personally want people to call?

22 A. I did not tell anyone to, but I would have liked to see  
23 it.

24 Q. Okay. I'm going to move to June 12th. I believe you  
25 testified about an e-mail that an anonymous group of team

1 members sent making some demands. Do you recall that  
2 testimony?

3 A. Yes.

4 Q. And before today had you seen or were you familiar with  
5 the letter?

6 A. With the e-mails?

7 Q. The e-mails

8 A. Yes.

9 Q. I think you said that you gave input in them?

10 A. Correct.

11 Q. I don't know if sign or sign off is the right phrase. Did  
12 you approve of the contents of the e-mail before it went out?

13 A. I would agree that signing off is definitely too strong of  
14 a word, but I gave my input of feeling that that was an  
15 appropriate thing to send.

16 Q. Let me ask it this way. Did you disagree with anything  
17 that was written in the June 12th letter -- e-mail?

18 A. I personally felt that it -- the point regarding having a  
19 system in place for aggressive customers, I knew that was going  
20 to be a difficult thing, but I didn't disagree with any of the  
21 points listed.

22 Q. That point was not in the June 12th.

23 A. Oh, okay. Well, then, well, then, no, I did not disagree.

24 Q. Okay. The June 12th e-mail first started the demand that  
25 Joe Burton be held accountable for the ways in which he

1 implicated each and every Whole Food employee in his personal  
2 political beliefs. Did you believe that Joe Burton implicated  
3 the South Street Whole Foods employees in his own personal  
4 political beliefs?

5 A. Yes.

6 Q. What did you think his own personal political beliefs  
7 were?

8 A. I think that he wanted to support some of these officers  
9 that were specifically being protested against.

10 Q. For police brutality violence?

11 A. Correct.

12 Q. And did you agree that by that conduct he was undercutting  
13 support for the Black Lives Matter movement?

14 A. Correct.

15 Q. Which I think you indicated at that time the largest part  
16 about it was protesting unjustified killing of African-  
17 Americans and police misconduct --?

18 A. Yes.

19 Q. Did you think Joe Burton -- did you personally believe  
20 that Joe Burton should have been fired for that conduct?

21 MR. PETERSON: Objection, relevance.

22 JUDGE SOTOLONGO: Sustained.

23 Q. BY MR. FORMAN: Did you believe that Mr. Burton's conduct  
24 in feeding police put the South Street store team members at  
25 risk and endangered their safety?



1 A. I believe that his conduct with the police at a whole did  
2 put us at an increased risk. That specific instance I don't  
3 think made anyone unsafe.

4 Q. The letter says we feel acutely that the actions of Joe  
5 Burton not only further dissolved trust but also endangered our  
6 safety. Your understanding that that sentence was not  
7 referring to the June 1st event?

8 A. That was to what I agree with that was his conduct as a  
9 whole. It was a pattern of him befriending the police officers  
10 that were in the conjoined station.

11 Q. I'm -- you lost me. What was his pattern with the  
12 police?

13 A. So he made it a pattern of inviting them in. They were  
14 allowed in the store without wearing masks. There was a later  
15 instance where they took over the parking garage, which we felt  
16 was maybe not allowed, but almost encouraged by his  
17 relationship with these police officers.

18 Q. Was that the July 4th event?

19 A. Yes.

20 Q. Wasn't that the event that you were encouraging your team  
21 members to leave and evacuate right away, and come to your  
22 home?

23 A. Yes.

24 Q. So because the police were there or because the police --  
25 whatever the police were there for?

1 A. Both.

2 Q. I think you indicated that you participated in the group  
3 text message chat through a platform called Telegram.

4 A. Yes.

5 Q. Do you recall team members in that Telegram group chat  
6 expressing their concern that by feeding the police, and  
7 putting his own personal agenda out there, Mr. Burton was  
8 effectively speaking for the store, and they needed to do  
9 something to get their voice back?

10 A. That was a part of the outrage. Another part of the  
11 outrage was the initial person who shared this infographic was  
12 fired, and we also felt that that was unjust.

13 Q. Okay.

14 A. So it was both of those.

15 Q. Other than what you heard, you don't know why that  
16 particular person was fired do you?

17 A. By other than what I heard, what do you mean?

18 Q. You weren't privy to the meetings between that individual  
19 and store leadership?

20 A. I spoke to that person, and was told what they were told.

21 Q. So you know from that person's perspective. You don't  
22 know from Whole Foods Market's perspective?

23 A. We were asked or we asked during the meeting with Scott  
24 why that person was let go, and we were told that they were a  
25 direct threat to the safety of the store, and that they made

1 this assessment based on this infographic.

2 Q. And to be clear that person, who we're not naming, but  
3 that person is Caucasian, correct?

4 A. Correct.

5 Q. Are you saying that you wore Black Lives Matter to protest  
6 a Caucasian person being fired?

7 A. No. We were protesting Joe feeding the police officers  
8 despite the protests happening, and we were also protesting the  
9 retaliation.

10 Q. I want to talk about that too because I think one of your  
11 demands was no one-on-one meetings, right?

12 A. Yes.

13 Q. Isn't it true that those who declined participating in  
14 one-on-ones did not have to participate in one-on-ones?

15 A. They were not forced to, but I was told by multiple co-  
16 workers that they were asked multiple times almost to the point  
17 of harassment at work. I know one person told me that they  
18 were asked five times in one shift if they would be willing to  
19 participate despite saying no every time. People were very  
20 uncomfortable by this.

21 Q. You were aware that Mr. Burton told some team members that  
22 he wasn't taking a stance on Black Lives Matter; rather, he was  
23 just thanking the police for helping out the store the past few  
24 days?

25 A. This is what he told us, yes.

1 Q. Do you recall one of your team members stating in the chat  
2 that, quote, not taking a stance is 100 percent choosing a  
3 side?

4 A. I do recall that message being sent, yes.

5 Q. What did you understand that to mean?

6 MR. PETERSON: Objection. Calls for speculation,  
7 relevance.

8 MR. FORMAN: I was asking this witness what she understood  
9 it to mean.

10 JUDGE SOTOLONGO: All right. I'll allow it.

11 THE WITNESS: Sorry. Allow the objection or --

12 JUDGE SOTOLONGO: No, no. I'll allow -- overruled the  
13 objection. You can go ahead and answer.

14 THE WITNESS: Okay. I believe that his action itself was  
15 taking a stance, and for him to say after the fact that he  
16 wasn't taking a stance seemed to be just him saving face. That  
17 was my understanding of the situation.

18 Q. BY MR. FORMAN: Okay. The next time the group of team  
19 members sent the letters on June 15th.

20 A. That sounds correct.

21 Q. An e-mail. I'm sorry.

22 A. Yes.

23 Q. And did you see that June 15th e-mail before it was sent?

24 A. Yes.

25 Q. Did you have input in that as well?

1 A. Yes.

2 Q. Did you disagree with anything in the June 15th letter?

3 A. Other than what I stated previously, no.

4 Q. Is it fair to say that with the exception of the point you  
5 raised a moment -- about the customers had reiterated the  
6 demands from the June 12th?

7 A. Correct.

8 Q. Let's talk about that other --. You were demanding a  
9 detailed action plan towards tangible protections against  
10 verbally violent customers, correct?

11 A. Correct.

12 Q. This included customers who were violent about COVID  
13 protocols?

14 A. Correct.

15 Q. This also included customers who engaged in sexual  
16 harassment towards team members?

17 A. Correct.

18 Q. Regardless of the team members' race?

19 A. Correct.

20 Q. Regardless of the team member identified as transgender or  
21 any other identity?

22 A. Yes.

23 Q. I think you also indicated in your affidavit that there  
24 was even an instance you were aware of where a customer told an  
25 Asian employee, quote, go back to China, end quote.

1 A. Yes.

2 Q. Was that part of the purpose of this demand?

3 A. That was -- it was bigotry as a whole but, yes, that was a  
4 part of it.

5 Q. Now, by June 15th, you knew that a Whole Foods store in  
6 Bedford, New Hampshire, had not allowed two team members to  
7 work while wearing Black Lives Matter facemasks, correct?

8 A. I believe I knew about it by that date. That sounds  
9 right. Again, the dates are a little fuzzy for me, but I --  
10 that sounds accurate, yes.

11 Q. Was that shared -- was the news article -- was a news  
12 article of that event or a social media post of that event  
13 shared in the group chat, if you remember?

14 A. Yes. I know I had heard about it prior to that, but I  
15 can't say how much earlier.

16 Q. And do you recall that news item that was shared  
17 indicating that the team members were wearing face masks that  
18 contained the message I Can't Breathe and Black Lives Matter?

19 A. I believe so, yes.

20 MR. FORMAN: I've handed you what's been marked for  
21 identification as Exhibit R, Respondent 61, which was provided  
22 to us pursuant to one of our subpoenas from one of the other  
23 Charging Parties here in Philadelphia, Kayleb Candrilli's  
24 counsel.

25 **(Respondent Exhibit 61 marked for identification.)**

1 Q. BY MR. FORMAN: Do you recognize this as a portion of the  
2 Telegram chat that you participated in?

3 A. Yes.

4 Q. And do you recognize what's depicted on this particular  
5 page as the article or social media post that was shared  
6 regarding the Bedford, New Hampshire, situation?

7 A. Are you asking if this post relates to that?

8 Q. Do you recognize this as the post that was shared in the  
9 Telegram?

10 A. Yes.

11 Q. Okay.

12 MR. PETERSON: Sorry, just a point. Was there a 60?

13 MR. FORMAN: Yeah, did I not move for the admission of 60?

14 UNIDENTIFIED SPEAKER: 60 was the graphic.

15 JUDGE SOTOLONGO: Yes -- admitted.

16 MR. PETERSON: Sorry. Apologize.

17 Q. BY MR. FORMAN: I think you said yes?

18 A. Yes, correct.

19 Q. Okay. You knew, I think you said a moment ago, you knew  
20 before -- if you look at the top, it's hard to, a little hard  
21 to read, but it says June 14th in a circle. Do you see that?

22 A. Um-hmm, yes.

23 Q. Did you know before June 14th about what had happened in  
24 New Hampshire?

25 A. I know I had seen this article when this was sent in the

1 group chat. It could have been that day. It could have been a  
2 couple days prior. I don't know exactly the timeframe of that,  
3 but I know I had already seen this post when this was put in  
4 the group chat.

5 Q. Okay. So you understood that Whole Foods was taking the  
6 position that Black Lives Matter message on a facemask violated  
7 the dress code policy?

8 A. We were at that time at least in our store not given a  
9 reason as to why but, yes, it violated a policy, and they were  
10 sent home for it.

11 Q. By the way, did you understand the phrase I Can't Breathe  
12 to be a Black Lives Matter associated message?

13 A. Yes.

14 Q. Do you know what it's in relationship to?

15 A. I believe that is the killing of George Floyd, the police  
16 officer standing on his neck until he died.

17 Q. Do you -- I know the timeline is fuzzy. So I'm just going  
18 to ask the best that you can remember. Do you recall whether  
19 you knew about the New Hampshire situation before you started  
20 wearing Black Lives Matter in any fashion to work or after?

21 A. I don't recall which one came first, if I'm being honest.  
22 I think I heard about them before I started wearing the pins,  
23 but I'm not entirely sure about that in the timeline.

24 Q. And did you wear the pins to protest what had happened to  
25 them?



1 A. I know eventually, yes. Eventually that became part of  
2 why I was wearing them. I don't -- like I said, I don't recall  
3 if I saw this first or if I started wearing the pins first.

4 Q. Oh, I think you said already the reason you started  
5 wearing the pins was because of what Joe did on June 1st, and  
6 because of the same reason the Black Lives Matter protests --  
7 were protesting police at that time?

8 A. Correct. And this tied into it eventually, but I, again,  
9 don't recall which one was first.

10 MR. FORMAN: Okay. I'll move for the admission of R-61,  
11 please.

12 MR. PETERSON: No objection.

13 JUDGE SOTOLONGO: Respondent's 61 is admitted.

14 **(Respondent Exhibit 61 received in evidence.)**

15 Q. BY MR. FORMAN: And, again, Ms. Kelly, this -- an  
16 occupational hazard of mine, but the town hall meeting with  
17 Mr. Burton, does June 17, 2020, sound about right?

18 A. You said the one with Joe Burton?

19 Q. Yes.

20 A. That sounds accurate, yeah.

21 Q. And you believe that the town hall was a result of the  
22 June 12th and June 15th letters that the team members had sent  
23 anonymously?

24 A. Yes.

25 Q. When I say letters, I mean e-mails.

1 A. Yes.

2 Q. Now, June 17th, I believe, from the Telegram chat was the  
3 date that you and your co-team members agreed to wear to work,  
4 quote, things that said Black Lives Matter or something  
5 similar, end quote, on June 19th; is that correct?

6 A. Yes.

7 Q. June 19, 2020, was Juneteenth?

8 A. Correct.

9 Q. Why did you pick Juneteenth?

10 A. Because that is a historical date of when slaves were  
11 notified of, of -- that they were free.

12 Q. Now, am I -- is my memory correct that when discussing  
13 what ultimately turned out to be the plan to wear Black Lives  
14 Matter or something similar, some of the team members mentioned  
15 that it could lead customers to engage in discussions as to why  
16 the team members are wearing Black Lives Matter?

17 A. I believe the discussions from the customers were more  
18 about there was also at the same time a call for a sick out. I  
19 believe that was a nation-wide movement that people were trying  
20 to make happen where basically people called out of work on  
21 Juneteenth to show their support. I think that was more of  
22 what we were assuming customers would talk about. But, yeah, a  
23 part of it was so customers could see our support of it.

24 Q. The sick out though in your group was voted down because  
25 the thought was it wouldn't be visible, and could hurt some

1 people economically?

2 A. Yes.

3 Q. So the idea was if you wore Black Lives Matter it would be  
4 visible, and some customers could approach you, and ask you why  
5 you were wearing Black Lives Matter?

6 A. Correct.

7 Q. Now, does that mean you understood that some customers  
8 could see you wearing Black Lives Matter visibly but not ask  
9 you why you're wearing it?

10 A. I'm sorry. Can you phrase that?

11 Q. Does it follow logically that you understood some  
12 customers wouldn't ask you about it?

13 A. Yes.

14 Q. What was your intention of wearing Black -- what was the  
15 message you were trying to convey to customers who did not ask  
16 you what you meant by Black Lives Matter? What were you trying  
17 to convey to them? What message?

18 A. I was more trying to convey the message to management than  
19 customers. That was my personal approach towards it. I did  
20 not approach any customers ever throughout this whole process.

21 Q. I understand. But you understood customers would see it?

22 A. Yes.

23 Q. Did you have any understanding of what they -- what  
24 message you wanted to convey to them?

25 MR. PETERSON: Objection. Calls for speculation. Asked

1 and answered. The witness testified that --

2 JUDGE SOTOLONGO: Speculation -- he's asking her about  
3 what was she hoping to convey. She wouldn't be speculating  
4 about her own intent, would she?

5 MR. PETERSON: She testified her intent was to convey the  
6 message to management not customers.

7 JUDGE SOTOLONGO: Okay.

8 Q. BY MR. FORMAN: Let me ask it this way. Is it fair to say  
9 that by wearing Black Lives Matter messaging in the workplace  
10 you understood that you were conveying to the community that  
11 you stood on the opposite side of Joe Burton, and that you  
12 actually supported the community as a team members as opposed  
13 to Joe Burton, whose actions demonstrated he supported the  
14 police?

15 A. Correct.

16 Q. Now, when the team members -- fair to say that you and  
17 your team members also felt that wearing the phrase Black Lives  
18 Matter would garner more attention to what you were trying to  
19 accomplish as it had with Bedford?

20 A. I mean and, again, that was not my specific goal, but I  
21 understood that that would be a potential outcome.

22 Q. All right. I want to go to the third e-mail dated June  
23 18th.

24 JUDGE SOTOLONGO: Take a five-minute break.

25 MR. FORMAN: Sure.

1           **JUDGE SOTOLONGO: Off the record.**

2           **(Off the record from 4:36 p.m. until 4:46 p.m.)**

3       Q.    BY MR. FORMAN: Okay, Ms. Kelly, before the break we were  
4       talking about the June 18th letter, and I, I wanted to ask you  
5       about one of the demands that I know showed up at all three,  
6       and it had to do with the, for lack of better word, text  
7       message alert system.

8       A.    Yes.

9       Q.    You had mentioned that one of the reasons, not the only  
10      one, but one of the reasons you wanted a better process was  
11      because -- a better way to notify people when the code changes  
12      for the door. Do you remember that testimony?

13      A.    Correct, yes.

14      Q.    People who opened needed a code to get in the store?

15      A.    Yes. There was a door on the side of the building that  
16      had a code that if you were there before management was you had  
17      to use that to -- or if you were an overnight staff member you  
18      had to use that to get in and out.

19      Q.    So not having a code would affect all team members,  
20      including you, correct?

21      A.    I wouldn't say all because if you were coming in during  
22      normal business hours, you could get in through the entrance  
23      but, yes.

24      Q.    I'm sorry. I meant all team members who were required to  
25      come in before management in the morning.

- 1 A. Yes, correct.
- 2 Q. And that would include you?
- 3 A. Correct.
- 4 Q. I'm not even sure we have this in the record so just in  
5 case we don't, for the record can you please state your race?
- 6 A. I am white.
- 7 Q. Thank you. Going back to the June 18th e-mail, is it fair  
8 to say that -- well, this reiterated the demands from the June  
9 12th and June 15th e-mails, correct?
- 10 A. Correct.
- 11 Q. And it also added one more demand, which was that the  
12 South Street store match the team members' donations to the  
13 Morris Home, right?
- 14 A. Yes.
- 15 Q. And that is a local nonprofit that supports trans and  
16 nonconforming Philadelphians?
- 17 A. Correct.
- 18 Q. Are you familiar with the Morris Home?
- 19 A. I am.
- 20 Q. Do you know if the trans and nonconforming Philadelphians  
21 that the Morris Home supports are people of all races?
- 22 A. They are, but it is primarily black.
- 23 Q. Caucasian people can go there?
- 24 A. They can, yes.
- 25 Q. Asian people?

1 A. Yes.

2 Q. Now, in addition to demands that were made of management,  
3 the e-mail also encouraged team members to wear Black Lives  
4 Matter pins and masks and shirts on June 19th, right?

5 A. Correct.

6 Q. And that's because this e-mail went to as many team  
7 members as possible?

8 A. Correct.

9 Q. And in the e-mail, the reason that you and the other  
10 anonymous individuals were encouraging team members to wear  
11 Black Lives Matter pins, masks and shirts was to stand in  
12 solidarity with the Black Lives Matter movement, correct?

13 A. Correct.

14 Q. And the Black Lives Matter movement as you understood it  
15 was the movement primarily focused on protesting police  
16 brutality, violence, and unjustified killing of African-  
17 Americans?

18 MR. PETERSON: Objection. Misstates testimony.

19 Q. BY MR. FORMAN: Was that -- what was the purpose of --  
20 when you, when the letter wrote that you wanted to stand in  
21 solidarity with the Black Lives Matter movement, what did you  
22 mean?

23 A. I did not write that letter, but I believe the statement  
24 was regarding standing in solidarity with the movement, and  
25 against what Joe Burton had done, which we felt was against the

1 movement.

2 Q. So what Joe Burton did was a Whole Foods issue; the  
3 movement was a larger global movement that we all know to be  
4 the movement protesting police brutality and violence and  
5 unjustified killing of African-Americans?

6 MR. PETERSON: Objection. Misstates testimony.

7 MR. FORMAN: It's a question.

8 JUDGE SOTOLONGO: Yes. You can answer, if you can.

9 THE WITNESS: What I, what, what he did directly tied into  
10 the Black Lives Matter movement, and was a Whole Foods issue.

11 Q. BY MR. FORMAN: Understood. But the Black Lives Matter  
12 movement is a movement focused on protests or eradicating  
13 unjustified killing of African-Americans and police brutality  
14 violence, right?

15 A. Yes.

16 Q. Now in the May -- the June 18th e-mail -- by the way, did  
17 you review this before it went out?

18 A. The e-mail?

19 Q. Yeah, the June 18th.

20 A. I believe so, yes.

21 Q. Did you disagree with any of it?

22 A. No.

23 Q. Okay. So in the part where it says that the team members  
24 had been actively following the situation in Bedford, New  
25 Hampshire, that was talking about the individuals we just



1 discussed in R-61?

2 A. Correct.

3 Q. And those were the team members who according to R-61 were  
4 wearing face masks and sneakers with the message I Can't  
5 Breathe and Black Lives Matter, correct?

6 A. Correct.

7 Q. Now, the e-mail also said that Whole Foods South Street  
8 employees, quote, stand against all overt and covert anti-  
9 blackness globally, nationally, locally, and in our store,  
10 right?

11 A. Correct.

12 Q. That would include anti-blackness in the Philadelphia  
13 community, right?

14 A. Yes.

15 Q. And in the State of Pennsylvania?

16 A. Yes.

17 Q. And in the country?

18 A. Yes.

19 Q. Not just Whole Foods?

20 A. Correct. Whole Foods is a part of those things.

21 Q. Sure. But people who are not at Whole Foods are not  
22 employees of Whole Foods, fair?

23 A. Yes.

24 Q. But anti-blackness would still apply to them as well?

25 A. To the employees at Whole Foods?

1 Q. No. People who aren't employees of Whole Foods.

2 A. Yes.

3 Q. And to be clear, other than you, you don't recall if any  
4 other team member was wearing Black Lives Matter messaging  
5 before June 19th?

6 A. I believe they were. I just don't have a number of who or  
7 how many.

8 Q. Let's go back to something I put a pin before. I've  
9 handed you what has been marked for identification as Exhibit  
10 R-62.

11 **(Respondent Exhibit 62 marked for identification.)**

12 Q. BY MR. FORMAN: This was a document that the General  
13 Counsel produced to us that I believe you provided in response  
14 to our subpoena. I'd ask you if you recognize this graphic?

15 A. Yes, I do.

16 Q. Okay. And did you or one of your co-team members make  
17 this?

18 A. I'm actually not sure who made this.

19 Q. Okay.

20 A. But I can say definitively that it was not me.

21 Q. Did Megan Murray make this?

22 A. I don't believe so but, again, I don't know for a fact.

23 Q. In any event, this was a graphic that was circulated  
24 amongst your team members on June 18th?

25 A. Yes, I believe so.

1 Q. And when I say circulated amongst your team members, I  
2 mean in the Telegram chat.

3 A. Yes.

4 Q. Did you share this?

5 A. I believe I did, yes.

6 Q. Instagram as well?

7 A. Yes. I believe it was exclusively on Instagram that I  
8 shared this.

9 Q. Now, at the top where there's a reference to June 1, this  
10 is referring to Joe Burton giving food and water to the police,  
11 correct?

12 A. Correct.

13 Q. And then the graphic goes on to state that the protests  
14 taking place outside of the South Street store were, quote,  
15 part of an international uprising against white supremacy and  
16 police terror following the deaths of George Floyd, Breonna  
17 Taylor and Ahmad Arbery. Do you see that?

18 A. I do.

19 Q. Do you agree that that was what the protests were about?

20 A. I believe that was a big part of what the protests were  
21 about. I don't believe that was exclusively what it was but,  
22 yes.

23 Q. Am I correct in understanding that you wanted the right to  
24 outwardly support that same protest but to do so within Whole  
25 Foods Market?

1 A. Sorry. Can you rephrase that?

2 Q. Yeah. Am I correct in understanding that you wanted the  
3 right to outwardly support the same Black Lives Matter movement  
4 protest but within Whole Foods Market?

5 A. Yes.

6 Q. And wearing the phrase Black Lives Matter or the acronym  
7 BLM while working was your way to do that?

8 A. That was a part of what it was, yes.

9 Q. The other part was I think you said protesting what Joe  
10 did on June 1st?

11 A. Correct.

12 MR. FORMAN: I move for admission of R-62.

13 MR. PETERSON: No objection.

14 JUDGE SOTOLONGO: Respondent's 62 is admitted.

15 **(Respondent Exhibit 62 received in evidence.)**

16 Q. BY MR. FORMAN: Okay. Well, I think we know that on June  
17 19th team members at South Street did, in fact, wear Black  
18 Lives Matter pins to work, correct?

19 A. Correct.

20 Q. And they were the pins that Mr. Candrilli passed out?

21 A. They were a variety of things. I know some of them were  
22 merchandise that I made. Some of them were things that Kayleb  
23 distributed that came from various sources. Some people  
24 brought their own.

25 Q. Pin like the one you're wearing today?

1 A. I can't say for certain. I think so. I wouldn't be  
2 surprised if that was the case.

3 Q. Okay. You worked on June 19th?

4 A. I did.

5 Q. I think you testified earlier that you did, in fact, wear  
6 Black Lives Matter pin or mask to work?

7 A. Yes.

8 Q. And leadership did not say anything to you on June 19th?

9 A. Correct.

10 Q. Now, in the chronology it indicates that on June 19, 2020,  
11 two employees were asked to remove their pins and masks, and in  
12 their refusal they were forced to clock out. Do you recall  
13 that?

14 A. Yes.

15 Q. That entry I mean?

16 A. Yes.

17 Q. Okay. And did you understand at the time at or around  
18 June 19, 2020, that leadership had informed team members that  
19 -- those team members that the Black Lives Matter pin or mask  
20 did not comply with the dress code?

21 A. That, yes, that was one of the rules that I was told that  
22 was being broken.

23 Q. Isn't it true that the team members, one of the team  
24 members wore the words or the initials Black Lives Matter  
25 embroidered on large letters over their entire front of their

1 mask?

2 A. I believe that happened, but I don't clearly recall that.

3 Q. And you don't recall if that was Amber Caruthers?

4 A. I, like I stated previously, don't know who that is.

5 Q. Did you understand that, I think, it was testified about  
6 earlier by another Charging Party that Alexis Hunt was the  
7 other employee who was talked to about their Black Lives Matter  
8 messaging that day?

9 A. I know Alexis, but I have not talked to her about that  
10 specifically.

11 Q. Did you know who the two employees were?

12 A. I know --

13 Q. I'm not asking you to tell me their names. So if I -- I'm  
14 not.

15 A. I can recall at least one of them. I think I know who the  
16 other one was, but I'm not totally clear on that. But I do  
17 know at least one of the people that got sent home.

18 Q. Here's a question I'd like to ask you. Do you know if the  
19 team members that were spoken to by leadership on June 19th  
20 were wearing facemasks that said Black Lives Matter on it as  
21 opposed to pins or buttons worn anywhere on the person  
22 including pinned to a facemask? Do you understand the  
23 question?

24 A. Yes. I don't recall what type of merchandise they were  
25 wearing.

1 Q. Okay. Did you know that -- do you know whether leadership  
2 gave those team members an option to remove their noncompliant  
3 merchandise and wear something that was compliant?

4 A. I mean, I was not a part of that conversation so I can't  
5 speak to that.

6 Q. Do you know whether the team members decided not to comply  
7 and just clocked out?

8 A. Same answer.

9 Q. As far as you understand, it was just two team members on  
10 June 19th, correct?

11 A. To my knowledge, yes.

12 Q. Okay.

13 A. That were sent home.

14 Q. Well, who reported in the chat that they were sent home?

15 A. Yes. To my knowledge, yes, that is correct.

16 Q. You recall that chat, there was discussion about the team  
17 members who were sent home, yes?

18 A. Yes.

19 Q. And you recall in the chat someone mentioned that someone  
20 wasn't -- we have the chat, but the names are redacted.

21 A. Yes.

22 Q. One of the chats mentioned that it was crazy that a person  
23 unknown was sent home because they were ATL. Do you recall  
24 that?

25 A. I think I know who that is in reference to. So, yes.

1 Q. Is that Amber Caruthers?

2 A. I do not know who Amber Caruthers is.

3 Q. Okay. Do you know if the person who you think was sent  
4 home was Caucasian or African-American, the ATL?

5 A. If it is the person I think it is, which is my own  
6 speculation, that person is black.

7 Q. Okay. Did you understand that leadership conducted  
8 huddles about the Black Lives Matter pins and masks throughout  
9 the day on June 19th?

10 A. I did not know that.

11 Q. Okay. Did you see any of your team members discussing  
12 what they shared with leadership during any huddles on June  
13 19th?

14 A. On the date?

15 Q. Sharing that they had in fact participated in huddles with  
16 leadership on June 19th, and then expressing the contents of  
17 those communications?

18 MR. PETERSON: Objection, relevance, and it calls for  
19 hearsay.

20 JUDGE SOTOLONGO: Can you rephrase the question?

21 MR. FORMAN: It was not a well phrased question.

22 Q. BY MR. FORMAN: Do you recall that in the group chat team  
23 members were discussing -- various team members were discussing  
24 that leadership talked to them during huddles on June 19th?

25 A. I recall them discussing there being one-on-one



1 conversations if that's what you mean by a huddle. To me  
2 huddle means like a small group. So I would like to clarify  
3 that. I was not aware of small group conversations, but I was  
4 aware of one-on-one conversations.

5 Q. Fair enough. Let's move on to June 20th. In the timeline  
6 I'm privy to it's indicated that there's a call-in campaign  
7 that's circulated on the Internet on the -- on June 20th asking  
8 customers to call in, and ask why team members were being sent  
9 home for BLM pins and masks. Do you recall that?

10 A. Vaguely, but yes.

11 Q. Were you shown a copy of this call-in campaign graphic  
12 that was sent on June 20th?

13 A. I would have to see it to answer that definitively.

14 Q. Okay. Do you have the GC exhibits in front of you?  
15 Sorry. The General Counsel's exhibits. I'm looking for this  
16 one, GC-51.

17 A. No. I don't have that in front of me.

18 MR. PETERSON: Her colleague --

19 MR. FORMAN: I don't -- I can -- Your Honor, may I  
20 approach?

21 JUDGE SOTOLONGO: Yes.

22 Q. BY MR. FORMAN: I'm handing you what's been admitted in  
23 this case as Exhibit GC-51. I ask you to take a look at that,  
24 and let us know if you recognize that as a call-in graphic that  
25 was circulated asking customers to voice their displeasure at

1 team members being sent home for wearing BLM pins.

2 A. I remember that being discussed. This looks familiar, but  
3 I, I don't really have a clear recollection of it.

4 Q. Did you circulate that?

5 A. I may have shared it on Instagram but, again, I -- this  
6 one I'm a lot less clear on in terms of remembering this one  
7 specifically.

8 Q. Does June 20th sound about right to you?

9 A. I know we talked about it then, so, yeah.

10 Q. See if I can refresh your recollection. I'm not going to  
11 make this an exhibit. It's from the group chat.

12 MR. FORMAN: Your Honor, may I approach?

13 JUDGE SOTOLONGO: Yes.

14 Q. BY MR. FORMAN: I'm handing you a page from the group chat  
15 that was produced pursuant to one of our subpoenas. It's dated  
16 June 20th at the top, and it has a copy of what I've just shown  
17 you as GC-51. Does that refresh your recollection that was  
18 shared in the group chat?

19 A. I mean, judging by this screenshot it definitely was  
20 shared in the group chat.

21 Q. Okay. And you think you might have shared that on your  
22 social media?

23 A. It's possible, yes.

24 Q. Okay. You still have the GC-51 in front of you? I want  
25 to focus --

1 A. Yes.

2 Q. -- your attention specifically on the language where it  
3 says in addition to gifting \$120 worth of merchandise to the  
4 police store leadership Whole Foods Market, South Street, is  
5 sending team members home for wearing Black Lives Matter pins  
6 and masks; do you see that?

7 A. Yes.

8 Q. Am I correct in understanding that you believe that both  
9 of those actions attributed to leadership are connected because  
10 both demonstrated that Whole Foods South Street leadership  
11 stood in solidarity with the police and against the Black Lives  
12 Matter protestors?

13 A. Are you asking if I believe that's what this says?

14 Q. Is that the connection?

15 A. Yes.

16 Q. Okay. And in your view giving money to the police, and  
17 sending people home was leadership supporting the police?

18 A. Correct.

19 Q. And acting against the interests of the people protesting  
20 police violence and brutality?

21 A. Correct.

22 Q. And you wanted the community to call South Street store  
23 leadership and demand to know why they did not support black  
24 lives, correct?

25 A. Correct.

1 Q. And by black lives you meant all black lives in the  
2 community?

3 A. Again, I did not write this graphic, but I believe that is  
4 what this graphic is stating.

5 Q. When you shared that is that what you wanted?

6 A. I have very vague recollection of sharing this at all.

7 Q. Okay.

8 A. But I would agree with that.

9 Q. Okay. Let's move on to I think there was also a -- I'm  
10 trying to get the terminology correct, excuse me, a picket  
11 graphic that circulated on June 20th, and I think you have it  
12 in front of you as -- it's the green one.

13 A. Yes. I have that.

14 Q. GC-52. Do you have that?

15 A. Yep, I have that.

16 Q. Is that sometimes referred to as a picket graphic?

17 A. That's the first time I've ever heard that term, but that  
18 sounds right.

19 Q. It was in the chronology. I had never heard it. But  
20 that's okay. But you've seen -- you're familiar with --

21 A. Yes. I know that I've seen this and shared this.

22 Q. And this advertised a protest or a picket outside of Whole  
23 Foods on June 21st?

24 A. Correct.

25 Q. I think you said you attended?

1 A. Correct.

2 Q. The graphic discussed the store providing \$120 worth of  
3 merchandise to the police, right?

4 A. Yes.

5 Q. Did you circulate this on your social media?

6 A. Yes.

7 Q. I want to focus your attention to the middle of the page.

8 Do you see where it says that -- one second. Okay. Thank you.

9 In the middle where it says that -- where it talks about team  
10 -- store leadership sending team members home for, quote,  
11 outwardly supporting BLM; do you see that?

12 A. Yes.

13 Q. Did you understand the phrase outwardly supporting the  
14 Black Lives Matter movement to mean supporting the protests  
15 that were occurring outside of the store in Philadelphia, the  
16 state and the country?

17 A. Yes.

18 Q. Okay. In the group chat, do you recall team members  
19 discussing that it would be prudent to first check with the  
20 local Philadelphia chapter of Black Lives Matter to make sure  
21 that they weren't stepping on anyone's toes?

22 A. I remember that being a part of the discussion, but I was  
23 not -- I don't believe I was part of the group of people that  
24 reached out to them specifically.

25 Q. Did you agree with that idea?

1 A. Yeah. I thought it was reasonable to check in.

2 Q. And the thought was to make sure that the Black Lives  
3 Matter Philadelphia organization didn't have something else  
4 scheduled for that day and time?

5 A. Correct.

6 Q. Do you know if that happened?

7 A. If what happened?

8 Q. If someone checked with the Philadelphia chapter of Black  
9 Lives Matter organization.

10 A. Like I said, I was not part of the people that reached out  
11 to them. So I can't say definitively, but I believe I recall  
12 that they did check.

13 Q. I think someone named Dison Airblade (ph.) -- I don't know  
14 who that is -- in the chat said that they contacted them, and  
15 that it was good to go. Does that refresh your memory?

16 MR. PETERSON: Objection, relevance.

17 JUDGE SOTOLONGO: I'll allow it.

18 THE WITNESS: I believe that did happen, yes.

19 Q. BY MR. FORMAN: Okay. I want to talk about the June 21st  
20 event, and I think you indicated you attended. Do you recall  
21 whether people in attendance brought signs and posters?

22 A. Yes.

23 Q. Isn't it true that there were signs that said Black Lives  
24 Matter?

25 A. Yes.

- 1 Q. Signs that said I Can't Breathe?
- 2 A. I believe so, yes.
- 3 Q. Black liberation hashtag makes me whole?
- 4 A. I don't clearly remember that, but it sounds right.
- 5 Q. I think you indicated that you were carrying a sign?
- 6 A. Yes.
- 7 Q. Do you have a packet in front of you called R-55? It
- 8 looks like this.
- 9 A. No.
- 10 MR. FORMAN: May I approach, Your Honor?
- 11 JUDGE SOTOLONGO: Yes.
- 12 Q. BY MR. FORMAN: Going to give you my copy, but I'm going
- 13 to take it back because --
- 14 A. Okay.
- 15 Q. I'm showing you a document that has been admitted as, as
- 16 R-55, and I want you to, to flip to the last page. I think
- 17 it's the last page. Is that the one of you?
- 18 A. Yes.
- 19 Q. Okay. And you were advocating for the right to wear the
- 20 phrase Black Lives Matter in the workplace, right?
- 21 A. Yes.
- 22 Q. And that was to stand in solidarity with the Black Lives
- 23 Matter protests that were going on at the time?
- 24 A. Correct.
- 25 Q. Now, take a look at -- I don't know what page it is. May

1 I?

2 A. Yeah. I do have a copy of the other one.

3 Q. If you could look at the other one. Although there's two

4 different pretty similar. One is an R, one is a GC.

5 A. Oh, I have the GC-53.

6 Q. You don't have R-54?

7 A. Not unless that's the one you just showed me.

8 Q. I'm showing you what's been admitted as R-54. The last

9 page, I know it's hard to see, but can you look in the crowd --

10 you see that little white sign?

11 A. Yes.

12 Q. Can you read what it says?

13 A. I believe that says I Can't Breathe.

14 Q. Do you recall seeing that there?

15 A. This is definitely from the protest. I can't recall all

16 the signs, but I know that that was there.

17 Q. All right. And I think you testified on direct you did

18 not testify at the -- excuse me -- you did not speak at the

19 protest?

20 A. That is correct.

21 Q. During the process, did you see one of your co-team

22 members draft speeches?

23 A. I'm sorry. Can you rephrase?

24 Q. Before the protest did one of your co-team members share a

25 copy of their draft speech with you?



1 A. Not with me, no.

2 Q. You had a copy of it though?

3 A. Of the speech?

4 Q. Yeah. We were produced one in response to our subpoena.

5 A. Oh, I believe that was a document I was on, but I didn't  
6 look at those. The comments there are people that I -- are  
7 names that I don't recognize. But, yeah, I, I suppose I was  
8 given a copy of this, yes.

9 Q. The first comment was by Kayleb Candrilli. Do you know  
10 who Kayleb Candrilli is?

11 A. Yes.

12 Q. Did you review this document?

13 A. I -- that was the first time seeing it. It was a Google  
14 doc which you can just add people to. So I don't, I don't  
15 recall reviewing it at the time. I viewed it since then  
16 because I had access to it.

17 Q. Okay. So you didn't review this before the 21st?

18 A. Correct.

19 Q. Did you review this before your employment ended with  
20 Whole Foods Market?

21 A. I don't believe so.

22 Q. Okay. I'm going to read something, and just see if you  
23 agree with it. There's something in it that says for weeks the  
24 South Street team members had been asking for the absolute bare  
25 minimum in regards to social justice in the predominantly black

1 community. Would you agree that that's what you and your team  
2 members were doing asking for the absolutely bare minimum in  
3 regards to social justice in a predominantly black community?

4 A. Yeah, I would agree with that.

5 Q. Okay. And by bare minimum, did you, did you understand  
6 that to mean wearing Black Lives Matter in the workplace?

7 A. Yes.

8 Q. So you wanted to wear Black Lives Matter in the workplace  
9 because of social justice in the predominantly black community?

10 A. Correct.

11 Q. By giving food to the police, Joe Burton made it  
12 abundantly clear that store leadership didn't think black lives  
13 mattered. Did you agree with that?

14 A. Is that a statement in the speech?

15 Q. Yeah.

16 A. Yes, I do agree with that.

17 Q. Oh, actually, it says made it abundantly clear when Burton  
18 gave the police \$120 of food and water just days after George  
19 Floyd's murder. Do you agree with that statement?

20 A. Yes.

21 Q. And do you recall someone saying that they didn't feel  
22 like they were -- I'll withdraw that question. In any event,  
23 leadership did not discipline you for attending the June 21st  
24 event, did it?

25 A. Correct.

1 Q. Now, I think you testified that after June 21 you  
2 continued wearing a Black Lives Matter pin or mask during  
3 working time?

4 A. I wore some type of Black Lives Matter merchandise, yes.

5 Q. And I think you testified you wore jewelry that said  
6 either Black Lives Matter or BLM during working time?

7 A. Correct.

8 Q. Did you wear the jewelry that you wore to work on days you  
9 weren't working when you were just walking out and about in  
10 Philadelphia?

11 MR. PETERSON: Objection, relevance.

12 JUDGE SOTOLONGO: Overruled.

13 THE WITNESS: I wore it walking to and from work, but I  
14 pretty much exclusively wore it at work.

15 Q. BY MR. FORMAN: Okay. Do you recall the number of shifts  
16 you worked between June 22nd and June 29th?

17 A. I don't.

18 Q. Does four sound right?

19 A. Sure. That sounds right. I was a full-time employee.

20 Q. Wednesday, June 24th, is that a date that you worked?

21 A. I can't say definitively what days I worked.

22 Q. Fair enough. We'll move on. Would you agree that from  
23 June 22nd through June 29th, leadership did not say anything to  
24 you about wearing Black Lives Matter pin or your Black Lives  
25 Matter jewelry?

- 1 A. Correct.
- 2 Q. The next time you worked was Wednesday, July 1st?
- 3 A. Again, I cannot speak to my specific shifts.
- 4 Q. So June 29th you testified was the date you had -- you
- 5 attended a meeting with Mr. Allshouse, correct?
- 6 A. Yes.
- 7 Q. June 23rd would have been the date you -- did you attend a
- 8 meeting with Travis Phaup?
- 9 A. I attended, I believe, one of the regional meetings.
- 10 Q. Okay.
- 11 A. And I do believe that was also after my shift that day.
- 12 Q. Would that have been on June 23rd that meeting after the
- 13 protest?
- 14 A. I think so, yes.
- 15 Q. Okay. And I think we've established that June 29th was
- 16 Mr. Allshouse, correct?
- 17 A. Yes.
- 18 Q. And the next shift you would have worked was Wednesday,
- 19 July 1st?
- 20 A. I -- sure, that sounds right.
- 21 Q. Okay. And at that time you were no longer wearing your
- 22 Black Lives Matter stitched masks while working?
- 23 A. Correct.
- 24 Q. But you still wore the phrase Black Lives Matter or BLM on
- 25 July 1st?

- 1 A. Yes.
- 2 Q. That would either be on a pin or jewelry?
- 3 A. Correct.
- 4 Q. Or both?
- 5 A. Correct.
- 6 Q. Now, you worked -- do you recall working on July --
- 7 Thursday, July 2nd, Friday, July 3rd, and Sunday, July 5th?
- 8 A. As I stated previously, I cannot speak to what shifts I
- 9 worked.
- 10 Q. Okay. I have to ask. I understand. In any event, did
- 11 you wear the phrase Black Lives Matter and/or BLM while working
- 12 on those days as well?
- 13 A. I believe so.
- 14 Q. That would be pin or jewelry or both?
- 15 A. Yes.
- 16 Q. Okay. Now, from July 1 through July 5, am I correct in
- 17 understanding that the only limitation that you were aware of
- 18 was that you couldn't wear the phrase Black Lives Matter on a
- 19 facemask?
- 20 A. That is what we were told by Scott, yes.
- 21 Q. You could wear the phrase -- the words Black Lives Matter
- 22 on a pin, if it was pinned to your shirt?
- 23 A. Correct.
- 24 Q. And you could wear jewelry provided that it was really
- 25 jewelry that said Black Lives Matter or BLM?

- 1 A. Can you clarify what you mean by really jewelry?
- 2 Q. Did you understand what was meant by that?
- 3 A. By?
- 4 Q. Did you understand whether the dress code prohibited
- 5 jewelry of any sort at that time?
- 6 A. To my knowledge, it did not.
- 7 Q. Okay. So to the extent someone was wearing jewelry that
- 8 said Black Lives Matter that did not -- that was not prohibited
- 9 by the dress code policy?
- 10 A. Correct.
- 11 Q. If they wore initials BLM that was not -- in jewelry form
- 12 that was not prohibited by the dress code?
- 13 A. Correct.
- 14 Q. And as long as you stayed within those parameters between
- 15 July 1 and July 5, leadership didn't say anything to you about
- 16 what you were wearing, correct?
- 17 A. Correct.
- 18 Q. Now, on Thursday, July 2nd, one of your team members
- 19 indicated in the chat, the Telegram chat, that leadership was
- 20 going to start strictly enforcing the dress code effective
- 21 Monday, July 6th, correct?
- 22 A. Yes. I believe that was the date of my write-up, my
- 23 corrective action.
- 24 Q. I think that was July 8th. We'll get to that in a moment.
- 25 A. Okay.

1 Q. And then on Saturday, July 4th, another team members --  
2 confirmed leadership told me Monday, July 6th, the day they're  
3 strictly enforcing, right?

4 A. Yes.

5 Q. And I think you testified on direct that leadership didn't  
6 tell you that a well?

7 A. I had not received any direct this is when we will be  
8 enforcing it until my conversation with Jamie.

9 Q. But you knew from the chat that -- from others that  
10 leadership planned on strictly enforcing the dress code as of  
11 July 6th, Monday?

12 A. Correct.

13 Q. And, in fact, there was a lot of discussion on the chat on  
14 what people would do on July 6th, correct?

15 A. Correct.

16 Q. The consensus, if my memory is correct, is that people who  
17 wanted to avoid a corrective action could wear jewelry, fair?

18 A. Correct.

19 Q. But as of July 6th, the phrase Black Lives Matter would be  
20 prohibited?

21 A. I believe so, yes.

22 Q. Which would include the two-inch in diameter Black Lives  
23 Matter pins that Kaleb Candrilli and others had been wearing?

24 A. Yes.

25 Q. But it did not include the copper BLM necklace that you're

1 wearing today?

2 A. Correct.

3 Q. Or the -- I'm going to get the phrase wrong, but polymer  
4 clay pendants, necklaces that you made either?

5 A. You got it right. Yes.

6 Q. I'm not a jewelry mama, but I'm trying to learn.

7 A. Are you aware that used to be my business name?

8 Q. Now, in response to these chats you indicated that you  
9 still planned on wearing the pins you made, didn't you?

10 A. Yes.

11 Q. And by Sunday of that weekend, July 5th, your position was  
12 that you would simply make more BLM necklaces if that was the  
13 way to go to get around the strict enforcement of the dress  
14 code that was going to go into effect the following day,  
15 Monday, July 6th?

16 A. Correct.

17 Q. Ms. Kelly, isn't it true that by Sunday, July 5th, you  
18 knew that you were going to be resigning from Whole Foods  
19 Market?

20 A. Yes.

21 Q. You had been working on getting a new job, which you  
22 thought was going to happen, and even if that opportunity had  
23 fallen through you already had a backup job in place?

24 A. Correct.

25 Q. And that's what you shared with your co-workers in the



- 1 group chat on Sunday, June 6th?
- 2 A. Correct.
- 3 Q. Sorry, July 6th.
- 4 A. Yes, yes. I understood what you meant.
- 5 Q. I'm messing up the record. Sunday, July 5th.
- 6 A. I do remember that I had been looking for a job at the
- 7 beginning of July, and had one lined up, and was planning on
- 8 leaving, yes.
- 9 Q. Now, you worked on Monday, July 6th, correct?
- 10 A. I believe so.
- 11 Q. And you wore your Black Lives Matter pin that day?
- 12 A. Yes.
- 13 Q. No one said anything to you that day?
- 14 A. I don't believe so, no. The first day I was officially
- 15 told not to wear one was the day of my corrective action.
- 16 Q. Which I think from the record, GC-55, was July 8th?
- 17 A. I believe so.
- 18 Q. On July 7th you did not work, correct, Tuesday?
- 19 A. I believe so but, again, I can't specifically testify to
- 20 what shifts I worked.
- 21 Q. Was that Tuesday, July 2nd, the day you e-mailed notice to
- 22 your team leadership of your last day?
- 23 A. I don't recall when specifically I e-mailed notice to
- 24 them. I know I verbally told a couple of my managers before
- 25 then, but I have no record of that obviously.

1 MR. FORMAN: Your Honor, may I approach?

2 I'm handing you what's been marked for identification as  
3 Exhibit R-63.

4 **(Respondent Exhibit 63 marked for identification.)**

5 Q. BY MR. FORMAN: I'd ask to take a look at it. Let us know  
6 whether you recognize this as an e-mail that you sent on or  
7 about July 7, 2020, at 9:35 a.m.?

8 A. Yes, that is correct.

9 Q. And is this the resignation e-mail that you sent to Abbey  
10 Lucas, Valerie Johnson, and Andrew Cressman (ph.)?

11 A. Correct.

12 Q. Ms. Johnson was the team leader, correct?

13 A. Correct.

14 Q. And Abbey Lucas and Andrew Cressman were both ATLs on your  
15 team?

16 A. Yes, correct.

17 Q. You didn't provide them any other written notification did  
18 you?

19 A. No.

20 MR. PETERSON: Objection, relevance.

21 JUDGE SOTOLONGO: Overruled.

22 Q. BY MR. FORMAN: Isn't it true you never told your team  
23 leader, Valerie Johnson, the reasons why you were resigning?

24 A. Not on paper.

25 Q. In any capacity you never told her did you?

1 A. I told Andrew Cressman and Abbey Lucas, but I don't  
2 believe I ever had a one-on-one conversation with Valerie  
3 Johnson.

4 Q. And you never told Mr. Kotmair that you were resigning,  
5 let alone the reasons at this time, correct?

6 A. Incorrect. I had already had a conversation with him  
7 about why I was leaving. Again, I have no documentation of  
8 that but --

9 Q. All right, let's turn our -- your attention, please to  
10 --

11 MR. FORMAN: Oh, I'm sorry. I'd like to move for  
12 admission of R-63.

13 MR. PETERSON: No objection.

14 JUDGE SOTOLONGO: -- 63 is admitted.

15 **(Respondent Exhibit 63 received in evidence.)**

16 Q. BY MR. FORMAN: I want to turn your attention to July 8th.  
17 The chronology indicates that a team member whose last day was  
18 scheduled for July 19, 2020, is given a written corrective  
19 action by Jamie Kotmair without having been given an official  
20 warning. Do you recall that entry?

21 A. I'm sorry, where is this entry?

22 Q. It was in the chronology that was produced to me by  
23 General Counsel --

24 A. Can you --

25 Q. -- in response to our subpoena.

1 A. Can you repeat that?

2 Q. Yeah. That a team member whose last day was scheduled for  
3 July 19, 2020, is given a written corrective action by Jamie  
4 Kotmair without having been given an official warning.

5 A. That is about me, but I think the date may have been  
6 incorrect on that timeline.

7 Q. And that's what I was trying to find out, Ms. Kelly. So  
8 this was about you, and your last day was July 12th, right?

9 A. Correct.

10 Q. Okay. And you were schedule to work on July 8th from  
11 8 a.m. to 3 p.m.?

12 A. That sounds accurate.

13 Q. You were wearing your Black Lives Matter pin that day,  
14 correct?

15 A. Correct.

16 Q. And shortly after 8:30 a.m., Mr. Kotmair approached you,  
17 and notified you that your pin did not comply with the  
18 company's dress code?

19 A. He did not specifically say those words. He told me that  
20 they were cracking down on the pins. That may have been how I  
21 phrased it in my statement to the Labor Board. I'm not  
22 positive how.

23 Q. Is that how you also would have phrased it to your fellow  
24 team members in the Telegram chat?

25 A. Possibly. I know he specifically didn't tell me it was a

1 dress code violation until I was receiving my written  
2 corrective action. But we -- it was implied.

3 Q. Okay. Mr. Kotmair also told you he was going to give you  
4 some time to consider complying with the dress code, and he'd  
5 circle back later after you had a chance to think about it?

6 A. Yes.

7 Q. A couple hours later Mr. Kotmair approached you again, but  
8 you were still wearing the pin?

9 A. Correct.

10 Q. Mr. Kotmair notified you again that the pin did not comply  
11 with the dress code policy?

12 A. Again, the dress code was not brought into question. I  
13 was just told I was not allowed to wear it. I was not given a  
14 specific reason why. As of then, I was also wearing the  
15 jewelry, which I was told was not against it.

16 Q. Mr. Kotmair notified you that if you didn't comply you  
17 could be, you could be subject to corrective action, right?

18 A. I was not told that in this discussion. Again, it was  
19 implied but --

20 Q. Do you recall sharing the events of July 8th in the  
21 Telegram chat with your co-workers?

22 A. I do.

23 MR. FORMAN: Your Honor, may I approach the witness?

24 JUDGE SOTOLONGO: Yes.

25 MR. FORMAN: I've handed you what's been marked for

1 identification Exhibit R-64.

2 **(Respondent Exhibit 64 marked for identification.)**

3 Q. BY MR. FORMAN: As you to take a look at specifically the  
4 entry at the bottom where it says I was also told that there  
5 may be corrective action, but I straight up said, quote, well,  
6 I put in notice that my last day is Sunday so, like, if you  
7 feel like doing all that paperwork, be my guest, end quote.  
8 You see that?

9 A. Yes. This was mentioned to me --

10 Q. Hold on. You wrote this didn't you?

11 A. Yes.

12 Q. Okay. So this refreshes your recollection that  
13 Mr. Kotmair told you that there may be corrective action?

14 A. Yes, he did.

15 Q. And in response I think you already testified in direct  
16 you told Mr. Kotmair that you had already put in your  
17 resignation notice, and that if he felt like filling out a  
18 bunch of paperwork he could be your guest?

19 A. Yes.

20 Q. Mr. Kotmair -- isn't it true that Mr. Kotmair replied to  
21 you that he was sorry to hear you were leaving, but that your  
22 noncompliance could still subject you to a corrective action?

23 A. Yes.

24 Q. Ultimately, you decided not to remove your pin, right?

25 A. Correct.

1 Q. Now, at or around 3 p.m., when you were getting ready to  
2 clock out, Mr. Kotmair, I believe you testified, asked you to  
3 meet with him in his office?

4 A. Correct.

5 Q. Before we get to that meeting, on direct you testified  
6 that the second interaction you had with Mr. Kotmair you both  
7 shared your personal views about Black Lives Matter, correct?

8 A. Correct.

9 Q. Did you tell Mr. Kotmair that you felt he didn't stand  
10 with the Black Lives Matter movement?

11 A. Yeah, I believe so.

12 Q. Did you tell Mr. Kotmair that the store had 40 to 50  
13 percent black staff?

14 A. I believe that was something we talked about, yeah.

15 Q. Did you tell Mr. Kotmair that I felt that by suppressing  
16 the BLM pins and masks the store actually communicated that  
17 black lives don't matter, and they don't care if the police  
18 brutalize people in the streets?

19 A. That is how I felt, yes.

20 Q. Did you tell Mr. Kotmair that other employees told you  
21 that they felt that way as well?

22 A. Yes.

23 Q. Okay. Let's go to the 3 p.m. meeting about which you  
24 testified. I think you said you were getting ready to clock  
25 out, and Mr. Kotmair asked you to meet with him in his office?

1 A. Correct.

2 Q. And Ms. Johnson was present as well?

3 A. I'm a little hazy. I think he went to go grab her, but  
4 she was there for the meeting, yes, yes.

5 Q. Fair enough. Before Mr. Kotmair could talk, you cut him  
6 off and said I know why I'm here. I'm tired. Let's do this.

7 A. He asked me if I had any, anything to say, and that is  
8 what I responded with.

9 Q. And then Mr. Kotmair issued the corrective action which  
10 has been introduced as an exhibit -- well, not this one, but  
11 one like this that's GC-55?

12 A. Correct.

13 Q. After you received the corrective action I believe you  
14 testified you decided you would switch to wearing the BLM  
15 necklace rather than the Black Lives Matter pin for your  
16 remaining shifts?

17 A. That is correct.

18 Q. And this was because you wanted to say goodbye to some of  
19 your fellow team members, and you knew that the BLM jewelry  
20 didn't violate the dress code?

21 A. Correct.

22 Q. And you worked on Thursday, July 9th, Friday, July 10th,  
23 and Sunday, July 12th as scheduled?

24 A. That sounds accurate, yes.

25 Q. And you didn't wear the Black Lives Matter pin or mask any



1 of those days?

2 A. Correct.

3 Q. But you did wear your BLM jewelry?

4 A. Correct.

5 Q. No one in leadership notified you that your BLM jewelry  
6 did not comply with the dress code, right?

7 A. Correct.

8 Q. And no one in leadership prohibited you from wearing the  
9 BLM jewelry?

10 A. Correct.

11 Q. You didn't receive any further discipline for  
12 receiving the BLM jewelry?

13 A. Correct.

14 Q. And the times you wore the BLM jewelry it was also to  
15 support the Black Lives Matter movement about which you  
16 previously testified?

17 A. Correct.

18 MR. FORMAN: Your Honor, may we go off the record, please?

19 **JUDGE SOTOLONGO: Go off the record.**

20 **(Off the record from 5:40 p.m. until 5:41 p.m.)**

21 **JUDGE SOTOLONGO: Back on the record.**

22 Mr. Forman.

23 MR. FORMAN: No further questions.

24 JUDGE SOTOLONGO: All right, Mr. Peterson.

25 MR. PETERSON: Thank you, Your Honor.

1 MR. FORMAN: Oh, I'm sorry. May I have one second? I  
2 forgot to move in R-64. I'd move for that now, please.

3 JUDGE SOTOLONGO: Any objection to --

4 MR. PETERSON: No objection.

5 JUDGE SOTOLONGO: -- 64? All right, so Respondent's 64 is  
6 admitted.

7 **(Respondent's Exhibit 64 received in evidence.)**

8 **REDIRECT EXAMINATION**

9 Q. BY MR. PETERSON: All right, Ms. Kelly, hello again.  
10 Counsel asked you some fair amount of questions about the --  
11 what the protestors outside of Whole Foods were protesting, and  
12 you acknowledged that a big part of it was police brutality?

13 A. Correct.

14 Q. Can you give understanding what other parts, what the  
15 other parts of what the protests were about?

16 A. A big part that I specifically had more of a tie to was  
17 the overarching marginalization of the black community, and  
18 more of some of the smaller things that police did that weren't  
19 necessarily murder, but were still putting down the black  
20 community.

21 Q. You mentioned the systemic oppression of black community  
22 and, and your family I believe you said. What did you mean by  
23 systematic oppression? What systems were you referring to?

24 A. Job inequality, you know, historical redlining, racism as  
25 a whole, and a lot of ways that the black community has been

1 set back because of the actions of discrimination of, of racist  
2 rulings that are put in place. I personally have people that  
3 are very close to me that have had very unfortunate and  
4 honestly kind of shocking interactions with police officers.  
5 So that was a big part of why I was a part of that.

6 Q. Do you consider your black co-workers part of the black  
7 community?

8 A. Yes.

9 Q. The pin you're wearing right now, how, how often did you  
10 wear that pin?

11 A. This specific pin?

12 Q. Yes.

13 A. I'm not sure exactly how often I wore this pin. More than  
14 once. I kind of rotated them out. Because of COVID I was  
15 washing everything very frequently. So I can't say for sure I  
16 wore this specific one, but I know I wore it a few times.

17 Q. That's the pin with the names of the people who were  
18 killed by the police --

19 A. Correct.

20 Q. -- written it?

21 MR. PETERSON: I only have one copy, but I have what's  
22 marked as General Counsel's Exhibit 57.

23 **(General Counsel's Exhibit 57 marked for identification.)**

24 MR. PETERSON: I'll get copies for everyone tomorrow, but  
25 I just want to get this in with this witness. It will be in

1 color. I can show it on the --

2 MR. FORMAN: You didn't -- this.

3 MR. PETERSON: I know. I just took a picture of it. I  
4 couldn't see that pin before, and I think it should be part of  
5 the record.

6 JUDGE SOTOLONGO: It's 50 -- well, the last one was 55,  
7 no?

8 MS. SCHAEFER: Yeah. You're at 56.

9 MR. PETERSON: Sorry. Well, yeah, so I realize that, but  
10 I have another. I have a 56 that is -- I'll be calling through  
11 another witness. So I apologize for it being sort of out  
12 order, but thank you for pointing that out.

13 Q. BY MR. PETERSON: Is that a -- do you see General  
14 Counsel's 57?

15 A. Yes.

16 Q. Is that an accurate depiction of the pin you're wearing at  
17 the moment?

18 A. Yes.

19 MR. PETERSON: Move for the admission of General Counsel's  
20 57.

21 MR. FORMAN: No objection.

22 JUDGE SOTOLONGO: All right. It's a photo of the pin she  
23 was wearing --, okay, photo of the pin. That's the one  
24 containing the names that you --

25 THE WITNESS: Correct.

1 JUDGE SOTOLONGO: Okay. All right, General Counsel's 57  
2 is admitted.

3 **(General Counsel Exhibit 57 received in evidence.)**

4 Q. BY MR. PETERSON: You were asked some questions about the  
5 uncivil conduct towards -- by customers towards employees in  
6 the workplace, and I think you said, and just to clarify, were  
7 those, were those employees black employees?

8 A. Some of them, yes.

9 Q. Because you mentioned -- there was testimony about an  
10 Asian employee that you --

11 A. Correct.

12 Q. Were the employees that you were aware of, were they  
13 wearing the -- were they wearing Black Lives Matter pins to  
14 your knowledge?

15 A. So the two instances that I specifically witnessed were  
16 black women that were not wearing the Black Lives Matter  
17 merchandise.

18 Q. And they were confronted by unruly customers?

19 A. Correct.

20 JUDGE SOTOLONGO: They were confronted about others  
21 wearing Black Lives Matter?

22 THE WITNESS: They were confronted about the movement as a  
23 whole, and what their thoughts were, and police brutality, and  
24 one of which was actually because our self checkout line was  
25 down was told that the police would be called on her, and then

1 the customer immediately left in a bit. That's one that I  
2 witnessed.

3 Q. BY MR. PETERSON: The who, who was going to call the  
4 police on whom?

5 A. The customer was going to call the police on the employee  
6 who was a black woman. And given what else was happening in  
7 the nation at that time it was very clearly motivated by what  
8 was happening.

9 Q. There's testimony about the Telegram chats, and you  
10 testified that part of, part of your outrage was the unjust  
11 firing of the person that we heard some testimony about?

12 A. Yes.

13 Q. You mentioned you were also protesting retaliation.

14 A. Yes.

15 Q. What did you mean by retaliation?

16 A. Well, because that person was fired, no matter what -- no  
17 matter how many people we thought stood with us in the store or  
18 in terms of customers we were afraid that if we were to go to  
19 management with our concerns that we would be reprimanded  
20 similarly; either given corrective actions or fired. And we  
21 needed our jobs.

22 Q. And there's some testimony -- there's -- counsel asked you  
23 about a June 17th town hall.

24 A. I believe that was the one with Joe Burton.

25 Q. Yeah, it was, yeah, well, yes. Did you attend that?

1 A. If that was the one with Joe Burton, then yes, I attended  
2 one of them. They were in shifts. Just because of COVID we  
3 could only limit it to so many people. But I did attend one of  
4 them.

5 Q. And then there was some testimony about the -- on the  
6 timeline about the two employees that were asked to remove  
7 their masks on June 19th. You said the one of them that you  
8 -- if it was who you were thinking of that person was black?

9 A. Yes.

10 Q. Do you know what race the other person was that you aren't  
11 aware of?

12 A. The person I am aware of is Asian.

13 Q. And counsel asked you about the speech that you produced  
14 pursuant to the subpoena?

15 A. Yes.

16 Q. Do you know -- did you hear that speech given at the June  
17 21st protest?

18 A. I know I heard all of the speeches. I think that was sort  
19 of a draft. Nobody was reading off of a written document. So  
20 I think this was more just a thing to get somebody's thoughts  
21 out, and then they sort of went off of that roughly.

22 Q. Do you recall if the -- one of the lines from the speech,  
23 the speaker saying racism has no home in a store where black  
24 customers are regularly tailed and profiled?

25 A. I don't know if word-for-word that was stated, but I

1 remember something to that effect, yes.

2 Q. Do you agree with that sentiment?

3 A. Yes.

4 Q. Do you recall the speaker saying racism has no home in a  
5 company where white middle managers are promoted to positions  
6 of store leadership to make six figures based on their  
7 willingness to ban and profile black customers?

8 A. I don't clearly remember that line, but I, I believe that  
9 it would have been stated there.

10 Q. Do you agree with that sentiment?

11 A. Yes.

12 Q. Do you recall the speaker saying racism has no home in a  
13 company that's forcing black team members in their 60s with a  
14 litany of health issues back to work in the middle of a global  
15 pandemic that's absolutely ravaging the black community?

16 A. Yes.

17 Q. Do you recall that part of the speech?

18 A. Yes.

19 Q. Do you agree with that sentiment?

20 A. I do.

21 Q. Do you recall the speaker saying racism has no home in a  
22 store where customers are allowed to use racial slurs, and to  
23 tell customers to go back to China, and literally walk back to  
24 the door the next day with no consequences?

25 A. I do.



1 Q. Do you agree -- you remember the speaker saying that?

2 A. Again, I don't remember word-for-word, but I do remember  
3 that sentiment, yes.

4 Q. Do you agree with the sentiment?

5 A. Yes.

6 Q. Do you recall the speaker saying racism has no home in a  
7 store that hasn't given a cent to the black community of  
8 Philadelphia they claim to serve, while simultaneously asking  
9 customers to donate their cynical useless charity Whole Planet,  
10 which is a glorified tax stunt?

11 A. I do remember that, yes.

12 Q. Do you agree with that sentiment?

13 A. Yes.

14 MR. PETERSON: No further questions.

15 JUDGE SOTOLONGO: Mr. Forman.

16 MR. FORMAN: No further questions.

17 JUDGE SOTOLONGO: All right. Well, I guess that's a wrap  
18 for today.

19 Ms. Kelly, thank you very much for your testimony. I'm  
20 going to ask you please do not discuss your testimony with any  
21 other witness or potential witness and this matter until this  
22 whole case is over. And so I thank you for your testimony  
23 today.

24 THE WITNESS: Thank you for having me.

25 **(Witness excused.)**

1 JUDGE SOTOLONGO: All right. We will resume tomorrow at  
2 nine. And okay -- and just so -- we can go off the record.  
3 **(Whereupon, at 5:53 p.m., the hearing in the above-entitled**  
4 **matter was continued, to resume the next day, Thursday,**  
5 **June 9, 2022, at 9:00 a.m.)**

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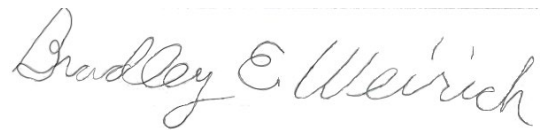
2            This is to certify that the attached proceedings before  
3    the National Labor Relations Board (NLRB), Region 4, in the  
4    matter of **WHOLE FOODS MARKET SERVICES, INC.,**  
5    **Case Nos. 01-CA-263079, 01-CA-263108, 01-CA-264917, 01-CA-265183,**  
6    **01-CA-266440, 01-CA-273840, 04-CA-262738, 04-CA-263142,**  
7    **04-CA-264240, 04-CA-264841, 05-CA-264906, 05-CA-266403,**  
8    **10-CA-264875, 19-CA-263263, 20-CA-264834, 25-CA-264904,**  
9    **32-CA-263226 and 32-CA-266442,** on **June 8, 2022,** was held  
10   according to the record, and that this is the original,  
11   complete, and true and accurate transcript that has been  
12   compared to the recording, at the hearing, that the exhibits  
13   are complete and no exhibits received in evidence or in the  
14   rejected exhibit files are missing.

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Bradley E. Weirich

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Official Reporter

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Free State Reporting, Inc.  
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Annapolis, MD 21409  
(410) 974-0947

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 04

<p>In the Matter of:</p> <p>WHOLE FOODS MARKET SERVICES, INC.,</p> <p style="text-align: center;">Respondent,</p> <p>and</p> <p>SAVANNAH KINSER, SUVERINO FRITH, LYLAH STYLES, ABDULAI BARRY, KIRBY BURT, KAYLEB CANDRILLI, LEEA KELLY, TRUMAN READ, HALEY EVANS, JUSTINE O'NEILL, JOLINA CHRISTIE, SARITA WILSON, CAMILLE TUCKER-TOLBERT, CASSIDY VISCO, YURI LONDON, ANA BELEN DEL RIO-RAMIREZ, CHRISTOPHER MICHNO, As Individuals,</p> <p style="text-align: center;">Charging Parties.</p>	<p>Case Nos: 01-CA-263079 01-CA-266440 01-CA-263108 01-CA-264917 01-CA-265183 01-CA-273840 04-CA-262738 04-CA-263142 04-CA-264240 04-CA-264841 05-CA-264906 05-CA-266403 10-CA-264875 19-CA-263263 20-CA-264834 25-CA-264904 32-CA-263226 32-CA-266442</p>
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The above-entitled matter came on for hearing pursuant to notice, before **ARIEL SOTOLONGO**, Administrative Law Judge, at **National Labor Relations Board, The Wanamaker Building, 100 East Penn Square, Suite 403, Philadelphia, Pennsylvania**, on **Thursday, June 9, 2022, at 9:00 a.m.**

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3	<b><u>WITNESSES</u></b>	<b><u>DIRECT</u></b>	<b><u>CROSS</u></b>	<b><u>REDIRECT</u></b>	<b><u>RECROSS</u></b>			<b><u>DIRE</u></b>
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2	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
3	GENERAL COUNSEL'S		
4	GC-56	1787	1800
5			
6	RESPONDENT'S		
7	R-65	1828	1833
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P R O C E E D I N G S

(Time Noted: 9:02 a.m.)

JUDGE SOTOLONGO: Let's go on the record.

Good morning. It's now Thursday, June the 9th. We're resuming our trial in Whole Foods, and without further ado, Mr. Peterson, are you ready to call your next witness?

MR. PETERSON: Yes. Thank you, Your Honor. General Counsel calls Haley Evans.

JUDGE SOTOLONGO: Ms. Evans, will you please raise your right hand? You can remove your mask to testify. Thank you. Could you please spell your name for us, and give us your address.

THE WITNESS: Yes, it's H-a-l-e-y.

JUDGE SOTOLONGO: Excuse me?

THE WITNESS: H-a-l-e-y.

JUDGE SOTOLONGO: Okay.

THE WITNESS: E-v-a-n-s. And I live at 109 Golden Meadow Lane, in Sicklerville, New Jersey.

JUDGE SOTOLONGO: Thank you very much, Ms. Evans.  
Mr. Peterson, please proceed.

MR. PETERSON: Thank you, Your Honor.

JUDGE SOTOLONGO:

(Whereupon,

HALEY EVANS

was called as a witness by and on behalf of the General Counsel

1 and, after having been previously duly sworn, was examined and  
2 testified as follows:)

3 **DIRECT EXAMINATION**

4 Q. BY MR. PETERSON: Good morning. First I'll ask you if you  
5 have preferred pronouns and honorifics?

6 A. She and her, please.

7 Q. Is Ms. okay?

8 A. Yes.

9 Q. All right. Ms. Evans, are you familiar with the company  
10 called Whole Foods?

11 A. Yes.

12 Q. And how are you familiar with Whole Foods?

13 A. I was employed there.

14 Q. Over what time period were you employed at Whole Foods?

15 A. From April, 2017 till August, 2020.

16 Q. And did you work at a particular Whole Foods location?

17 A. Yes. I worked at Whole Foods in Marlton, New Jersey.

18 Q. Did you work in more than one position at Whole Foods in  
19 Marlton?

20 A. I worked in prepared foods, but within that department  
21 there were a couple of different stations that I worked on.

22 Q. Can you kind of describe the stations and your job duties  
23 generally?

24 A. Of course. So I worked on deli. I worked on the sandwich  
25 station. I would help out on the pizza and the bistro

1 stations, and then I also did like salad bar.

2 Q. During 2020 did you take any time off from Whole Foods?

3 A. Yes, I did.

4 Q. What time period did you take off?

5 A. From March till early June.

6 Q. Do you remember the date you reported back to work in  
7 June?

8 A. Yes. It was June 16th.

9 Q. When you reported back to work, do you recall what the  
10 management structure was at Whole Foods?

11 A. Yes. So on my direct team, on that specific day, I  
12 believe all three of my managers were there, Michael  
13 Stellaccio, Brea Falice and Daniella Nunn.

14 Q. And do you know what their positions were or titles?

15 A. Yes. Brea and Daniella were ATL's, also known as  
16 assistant team leaders. And then Michael was our main team  
17 lead.

18 Q. And do you know who was the managers above them?

19 A. Yes. Carol Kingsmore, I believe her last name is. Nick,  
20 and then a gentleman by the name of Gersi.

21 Q. Do you know Nick's last name?

22 A. I think it's like Paladino or something.

23 Q. And is Gersi a first name or a last name?

24 A. Gersi is a first name.

25 Q. Do you know Gersi's last name?

1 A. Mollaj, I think.

2 Q. Were they the same -- all the six managers you described,  
3 were they the same managers that were there when you left work  
4 around March, or were they new to you?

5 A. I believe -- I think Gersi might have been new. I think  
6 when I left a man named Kevin was in his position. I don't  
7 entirely -- but I believe Kevin was in his position, and when I  
8 came back, Gersi had assumed his role.

9 Q. When you left, when you took the leave of absence around  
10 March, were employees wearing masks at Whole Foods?

11 A. They were not.

12 Q. When you returned, were employee wearing masks at Whole  
13 Foods?

14 A. They were.

15 Q. Were you aware of the mask requirement before you returned  
16 to work?

17 A. I was.

18 Q. Did you recall the date that you returned to work?

19 A. June 16th, 2020.

20 Q. I think you already answered that, but I'm just making  
21 sure. Can you describe the mask that you wore on June 16th,  
22 when you returned to work?

23 A. Certainly. It was a black mask with "No justice, no  
24 peace" in white writing.

25 Q. Do you have that mask with you today?

1 A. I do not. I unfortunately misplaced it.

2 Q. Can you describe the -- black mask with what color of  
3 lettering?

4 A. White lettering. It was an all black mask, white  
5 lettering. The top line said, "No justice." The bottom line  
6 said "No peace."

7 Q. Were the letters approximately an inch, do you recall --

8 A. Yes.

9 Q. -- or so? When you returned on June 16th, did you have  
10 any interaction with any of your managers?

11 A. I did, yes.

12 Q. Which ones?

13 A. All three of them.

14 Q. Did any of them comment on your mask?

15 A. Yes, Daniella said she liked it.

16 JUDGE SOTOLONGO: And Daniella was your immediate  
17 supervisor or --

18 THE WITNESS: She as an assistant team leader.

19 JUDGE SOTOLONGO: Assistant team leader, okay.

20 THE WITNESS: Yes.

21 JUDGE SOTOLONGO: Proceed.

22 Q. BY MR. PETERSON: Did you notice if any other of your co-  
23 workers were wearing masks with any logos or messages on them?

24 A. I can say factually that like there were -- I believe I  
25 saw some prints, maybe like some like flower prints and things

1 like that. I definitely saw a lot of masks that were not  
2 related to the Whole Foods specific masks.

3 Q. Did you have any discussions with any co-workers about  
4 your mask on the first day?

5 A. No, I did not.

6 Q. Why did you choose to wear that mask when you reported to  
7 work on June 16th?

8 A. Just with everything going on in the world, there was a  
9 lot of racial -- racial tension, you know, obviously a very  
10 horrific incident took place with the unfortunate and rather  
11 brutal murdering of George Floyd, so yeah, that had a lot to do  
12 with why I wore the mask.

13 Q. Did you believe your mask was in violation of the dress  
14 code policy on June 16th?

15 A. I did not.

16 Q. What was your schedule when you returned on June 16th?  
17 What was your work schedule?

18 A. I believe it was -- excuse me. I think it was 1:30 to  
19 9:30 shift.

20 Q. And were you working full time or part time?

21 A. I was part time.

22 JUDGE SOTOLONGO: So 1:30 in the afternoon till 9:30 in  
23 the evening?

24 THE WITNESS: Correct.

25 Q. BY MR. PETERSON: And how many days a week were you

1 scheduled to work?

2 A. That particular week, two, but over my -- I guess work  
3 career at Whole Foods, I was part time, so I worked anywhere  
4 from 3 to 4 days a week.

5 Q. And that week you were scheduled for two days?

6 A. Correct.

7 Q. Other than Daniella saying she liked your mask, any other  
8 discussions with managers or co-workers about your mask on that  
9 day?

10 A. No.

11 Q. When was your next shift?

12 A. The next day, so Wednesday, June 17th.

13 Q. And were you wearing a mask when you reported to work?

14 A. Yes.

15 Q. Which mask?

16 A. "No justice, no peace."

17 Q. Did you see any managers on June 17th?

18 A. I did.

19 Q. Which ones?

20 A. I believe it was all three of them again. Maybe two of  
21 them, but I believe it was all three of them.

22 Q. And I guess can you kind of describe how you have contact  
23 with your managers?

24 A. Yeah, of course. So specifically over those two days, I  
25 was actually up close with them, so June 16th, when I returned,

1 obviously because I had not been at work, there were like --  
2 they normally give out tee-shirts and like hoodies and things  
3 like that, and there was some things that I missed and so Brea  
4 took me upstairs and she gave me -- I actually have them with  
5 me. She gave me a green hoodie and a gray tee-shirt. She  
6 never gave me a mask. And then obviously, I encountered  
7 Daniella one of those two days, and she told me that she liked  
8 my mask. And then one of those two days we had a call out on  
9 the pizza station, and I was working on sandwich, and nobody  
10 else could cover the shift, so Michael, who was my main team  
11 leader, came down and was working right next to me.

12 Q. And did Michael say anything about your mask?

13 A. He did not.

14 JUDGE SOTOLONGO: So he was making sandwiches next to you  
15 that --

16 THE WITNESS: He was making pizza next to me, yes.

17 JUDGE SOTOLONGO: All right.

18 Q. BY MR. PETERSON: And other than what you've described on  
19 June 16th or June 17th, any managers say anything to you about  
20 your mask?

21 A. No.

22 Q. Any co-workers?

23 A. I think maybe one or two of them said -- came by and said  
24 that they liked it.

25 Q. And did you subsequently learn about Whole Foods sending



1 employees home for wearing masks related to "Black Lives  
2 Matter"?

3 A. I did.

4 Q. How did you get that information?

5 A. I was scrolling through my Facebook newsfeed and I -- I  
6 came across an article regarding a store in Philadelphia, where  
7 individuals were asked to leave because they were wearing  
8 "Black Lives Matter" masks.

9 Q. Do you recall when in time that was in relation to June  
10 16th, when you returned to work?

11 A. I believe it was the following week.

12 Q. And did you have any reaction to reading that article?

13 A. Yeah, I did. I know for me personally, in the store  
14 location that I was working at, it was quite refreshing when I  
15 showed up on my first day back, to see that they had so many  
16 banners and visible signs hanging not only outside of the  
17 store, but inside of the store. On the TV in the breakroom  
18 they had messages about standing in solidarity with the black  
19 community and being against racism, so like I said, I can't  
20 speak on other Whole Foods locations, but I'm assuming that  
21 they all operate similarly, and it was -- it was a little bit  
22 shocking for me to hear that a store that was so openly  
23 expressing support for the black community, would then suddenly  
24 send employees home for --

25 JUDGE SOTOLONGO: And what platform did you say that you

1 saw these pieces of news in, do you recall?

2 THE WITNESS: Facebook.

3 JUDGE SOTOLONGO: Facebook?

4 THE WITNESS: Yes.

5 JUDGE SOTOLONGO: There was a posting by somebody on  
6 Facebook or --

7 THE WITNESS: Yes. So generally on Facebook, like on your  
8 newsfeed, you'll see like other individual statuses. You can  
9 see like news articles and things like that, so yeah.

10 JUDGE SOTOLONGO: Very well.

11 Q. BY MR. PETERSON: And when was your next shift?

12 A. June 22nd, 2020.

13 Q. Did you come across that article before June 22nd, your  
14 next shift?

15 A. Yes, I did. I believe it was right before my shift  
16 actually.

17 Q. Were you wearing a mask on June 22nd?

18 A. I was, yes.

19 Q. Can you describe the mask that you were wearing?

20 A. Yes. I have that one with me, as well. It's a black mask  
21 and it says, "'Black Lives Matter'" in white lettering, and  
22 then it has like the, I guess, the black power fist, like on  
23 the side.

24 MR. BROWN: It says what?

25 THE WITNESS: "'Black Lives Matter'." It's a --

1 MR. BROWN: I thought you said something on the side and  
2 it --

3 THE WITNESS: Oh, yeah. So with the "Black Lives Matter"  
4 mask, it says ""Black Lives Matter"," and then on the side like  
5 kind of left to the ""Black Lives Matter"," it has the black  
6 power fist.

7 MR. BROWN: A black power fist. Thanks.

8 Q. BY MR. PETERSON: You said you have that with you today?

9 A. I do, yes.

10 Q. Can you show it to us, please?

11 A. Yes. Am I able to --

12 Q. Yes.

13 A. Thank you.

14 JUDGE SOTOLONGO: All right. The witness is showing, a  
15 black mask with white lettering, and it says, ""Black Lives  
16 Matter"," Black on top. Lives in the middle, Matter on the  
17 bottom. The letters are maybe an inch-and-a-half, two inches  
18 in length, very visible from -- I'm about maybe eight feet from  
19 the witness and it is clearly visible. And there's a fist to  
20 the right on the "Black Lives Matter" message. It's a fist,  
21 upraised fist, also in a white color.

22 MR. BROWN: I think it's to the left, Your Honor. It  
23 depends where you're looking, I guess.

24 JUDGE SOTOLONGO: I stand corrected. Yes, it's to the  
25 left of the "Black Lives Matter", looking at the person from

1 the -- from the person to the right, so I stand corrected.

2 MR. BROWN: Thank you.

3 JUDGE SOTOLONGO: All right. Thank you.

4 MR. PETERSON: Your Honor, I'll take a picture of it and  
5 offer it as an exhibit.

6 JUDGE SOTOLONGO: Very well. All right. And that's the  
7 first day you had work this particular mask?

8 THE WITNESS: Correct, June 22nd.

9 JUDGE SOTOLONGO: Okay.

10 Q. BY MR. PETERSON: And what happened on June 22nd?

11 A. Well, I showed up to my shift like I normally do. I came  
12 in and I started working in the deli portion of prepared foods.  
13 For approximately two to two-and-a-half hours, at which point  
14 Michael, who is my -- or was my main team leader, excuse me,  
15 and Daniella came to the deli area and asked me if I would come  
16 back into the kitchen portion, which is kind of like a secluded  
17 portion, of prepared foods. And I went back there and he asked  
18 me if I had received a Whole Foods mask, specifically it's a  
19 black mask with green Whole Foods lettering. And I said no,  
20 and he said well, I just walked around the store and nobody  
21 else is wearing wording on their masks.

22 And he said to be in compliance with the dress code, I  
23 couldn't be wearing a mask with wording on it, and if I was, I  
24 was in violation of the dress code, to which I told him that I  
25 believed that he was infringing on my First Amendment rights,

1 that I had wore a "No justice, no peace" mask the week before,  
2 and I worked simultaneously with all of my direct management,  
3 and none of them ever said anything. In fact, Daniella said  
4 she liked the mask.

5 I told them that it was -- I felt like it was rather  
6 ridiculous that I was being asked to take off this mask and I  
7 was literally -- quite literally working directly next to  
8 somebody who made a racial remark to me a few months prior.

9 And as I was saying that, Daniella started to cry, and  
10 I --

11 MR. BROWN: Objection. Your Honor, the question was what  
12 happened that day, and now we are -- she far afield.

13 MR. PETERSON: Are you telling us what you told Michael?

14 THE WITNESS: Yes.

15 MR. PETERSON: So she's describing a meeting.

16 JUDGE SOTOLONGO: Well --

17 MR. BROWN: The problem, she's --

18 MR. PETERSON: The question was what happened that day,  
19 and --

20 MR. BROWN: What happened that day asks for a narrative  
21 answer. That's not -- basically it could be a three, four,  
22 five-hour answer, you know. We happened in the day. You're  
23 saying okay, we had a meeting, so what did he say, who was  
24 there, what did he say, what did she say, and --

25 JUDGE SOTOLONGO: You will have follow-up questions. So

1 just limit yourself to answering the question asked  
2 specifically. Of course, the question was what happened that  
3 day? So that gives you -- you shouldn't ask that kind of a  
4 question. You had a meeting with Michael and so tell us what  
5 happened during the meeting. What did you say? What did he  
6 say? If anybody was there, like Daniella --

7 THE WITNESS: Yeah, she was there.

8 JUDGE SOTOLONGO: What did she say, and then he'll take it  
9 from there. You know, tell what happened, you know, then the  
10 following so --

11 THE WITNESS: Certainly.

12 JUDGE SOTOLONGO: So ask your next question, Mr. Peterson.

13 Q. BY MR. PETERSON: So you were describing -- I guess I'll  
14 have you start over. So you were told to come into the area  
15 you described. Who was present?

16 A. Michael and Daniella and myself.

17 Q. About how long did the meeting last?

18 A. Maybe seven to ten minutes.

19 Q. And how did the meeting begin?

20 A. It began with Michael asking me if I had received a Whole  
21 Foods mask, to which I answered no.

22 Q. And what happened next? Who said what next?

23 A. Then he replied something along the lines of well,  
24 Daniella and I were just walking around the store, and nobody  
25 else was wearing masks with wording on them, to which I replied

1 that, you know, the week prior I wore "No justice, no peace"  
2 mask and, you know, that was -- and I worked simultaneously  
3 with you guys, and nobody ever said anything, to which Daniella  
4 didn't verbally reply, but she replied with her emotions and  
5 started to cry.

6 And then, you know, I pretty much went into how I felt  
7 like they were infringing on my First Amendment rights, how I  
8 was working next to somebody who had made a racial remark to  
9 me, and I felt like it was rather ridiculous that they were  
10 asking me to remove my "Black Lives Matter" mask, because I was  
11 working that -- but yet I'm still working next to this  
12 individual who made a racial remark to me.

13 Q. These are the words you're telling them?

14 A. Yeah, these are the words I'm telling them. And then  
15 Michael just sort of reaffirmed that, you know, to be in  
16 compliance with the dress code, I couldn't be wearing a mask  
17 with writing on it. And when I didn't take my mask off, he  
18 told me okay, Nick, who was the store leader that was at the  
19 store at the time, would want to speak with me, and then I  
20 returned back to work for a little bit.

21 Q. Were you still wearing the mask when you returned to  
22 work?

23 A. I was.

24 Q. The racial -- was there any further discussion during that  
25 incident about the racial remark that you mentioned to them?

1 A. I don't believe so.

2 Q Had you reported a previous racial remark to any of those  
3 people in the room?

4 A. I did.

5 MR. BROWN: Objection. Objection. The case, as you know  
6 well, Your Honor, is about the wearing of the "Black Lives  
7 Matter" mask. The individual testifying today testified that  
8 she was wearing two different types of "Black Lives Matter"  
9 masks, and now is being told that it violates the policy.  
10 Unless she's going to say that she was wearing it, which she  
11 can't say, because of the person working next to her who made a  
12 racial remark a year and a half earlier, then this is not  
13 relevant.

14 JUDGE SOTOLONGO: I tend to agree with you. When was that  
15 remark made to you, Ms. Evans?

16 THE WITNESS: If my memory serves me correctly, I believe  
17 it was a couple of months prior.

18 JUDGE SOTOLONGO: And did you report that message?

19 THE WITNESS: I did, yes.

20 JUDGE SOTOLONGO: To whom?

21 THE WITNESS: To Michael Stellaccio, my main team leader.

22 JUDGE SOTOLONGO: And what, if anything, came of that?

23 THE WITNESS: He reported it to Kevin, who was the store  
24 leader, one of the store leaders.

25 JUDGE SOTOLONGO: You know that for a fact? You heard him



1 report it to -- or he told you he had reported it to --

2 THE WITNESS: He told me he had reported it to Kevin, and  
3 then I was actually called upstairs by Kevin to sort of talk  
4 about the incident.

5 JUDGE SOTOLONGO: Right. Back months earlier?

6 THE WITNESS: I'm sorry?

7 JUDGE SOTOLONGO: This happened a couple of months  
8 earlier?

9 THE WITNESS: Yes.

10 JUDGE SOTOLONGO: This is before you had left on leave?

11 THE WITNESS: Yes. Yes.

12 JUDGE SOTOLONGO: So approximately what time period?

13 THE WITNESS: I -- I thought it was around February --  
14 January or February, 2020.

15 JUDGE SOTOLONGO: Can you tell us the nature of the  
16 remark?

17 THE WITNESS: Yes. So that evening I was working on the  
18 sandwich station. He was working on bistro, and -- excuse me.  
19 As part of my duties on that station, I have to bake bread to  
20 make sandwiches with. And I placed some rolls in the oven and  
21 left them for a couple minutes, and my station got pretty  
22 crowded, and as a result the rolls got a bit burnt. When I  
23 went back there, rather than throwing them away, I just thought  
24 that I would leave them for the morning crew for them to make  
25 croutons with, and so as I'm gathering the rolls to sort of put

1    them in a bag and head back out to the sandwich station, this  
2    individual -- his name is John -- he comes back and he says  
3    hey, do you want to hear a funny joke? And before I could  
4    answer, he goes, those rolls are darker than you, which I  
5    obviously personally felt like was not appropriate. And so I  
6    reported the incident.

7           JUDGE SOTOLONGO: And this is a fellow worker, not a  
8    supervisor?

9           THE WITNESS: Yes. A fellow worker, correct.

10          JUDGE SOTOLONGO: So all right. Go ahead.

11    Q.    BY MR. PETERSON: So part of the point was so Michael was  
12    familiar with what you were talking about, when you mentioned  
13    the racist incident?

14    A.    He was.

15    Q.    Okay. So then you went back to work after the meeting.  
16    What happened? Were there any other discussions about your  
17    mask that day?

18    A.    Yes. So I went back to work for approximately 30 minutes,  
19    and then --

20          JUDGE SOTOLONGO: You were still wearing your "Black Lives  
21    Matter" mask?

22          THE WITNESS: Correct.

23          JUDGE SOTOLONGO: Okay.

24          THE WITNESS: And then my assistant team leader, Brea,  
25    came down and told me that Nick would like to speak to me

1 upstairs, and I went upstairs, and I spoke with Nick, and Brea  
2 was also present.

3 Q. BY MR. PETERSON: And how did that meeting begin?

4 A. It started out with Nick telling me that I was brave.  
5 While he was saying all this stuff, he was rather emotional,  
6 and that he didn't understand what -- he would never know what  
7 it was like to be black. But he said that Whole Foods had a  
8 dress code policy, and that the dress code policy was that I  
9 needed to be wearing a Whole Foods specific mask. And I told  
10 him, well, you know, I had -- there are people out there that  
11 are wearing, for instance, like masks with prints and surgical  
12 masks that are not Whole Foods specific.

13 And then he compared wearing a "Black Lives Matter" mask  
14 to wearing a mask that said "F You," and he pretty much told me  
15 that if I didn't comply with the dress code, that I could not  
16 work.

17 JUDGE SOTOLONGO: All right. What did you say, reply, if  
18 anything?

19 THE WITNESS: I said okay, thank you, and I got up.

20 JUDGE SOTOLONGO: Who was the third person in the meeting?

21 THE WITNESS: Brea Falice, so she's my assistant, or she  
22 was my assistant team leader.

23 JUDGE SOTOLONGO: And Nick is the store leader?

24 THE WITNESS: Yeah. I think he was an assistant store  
25 leader.

1 JUDGE SOTOLONGO: Assistant store leader, okay.

2 Q. BY MR. PETERSON: Anything else you recall about that  
3 discussion?

4 A. Yeah, I think I pretty much reiterated my same points that  
5 I reiterated or that I told to Michael, that like I was working  
6 next to somebody, it was interesting that they were asking me  
7 to leave on account of a "Black Lives Matter" mask, when I was  
8 working next to somebody who made a racial remark to me. Yeah,  
9 and that the week prior I wore a mask that said "No justice, no  
10 peace", and nobody said anything, to which I don't believe he  
11 had a response. He just sort of circled back to his initial  
12 point that if I wasn't wearing a Whole Foods mask, then I  
13 wasn't in compliance with the dress code.

14 Q. Were you given any options?

15 A. Yes, I believe I was offered a mask.

16 Q. Let me say this, were you told you could continue wearing  
17 the mask?

18 A. My "Black Lives Matter" mask?

19 Q. Yes.

20 A. No. I was told I either have to take it off or I had to  
21 leave.

22 Q. And who told you that?

23 A. Nick.

24 Q. Did you say anything in response?

25 A. I said okay, thank you, and I got up and left.

1 Q. Did you clock out?

2 A. I did, yes.

3 Q. And did you time remaining on your shift?

4 A. I did.

5 Q. About how much?

6 A. Around five hours maybe.

7 Q. Did you continue to wear the mask as you left the store?

8 A. I did.

9 Q. Did you report to work for your next shift?

10 A. I didn't. So I was sort of unsure how to proceed, because  
11 it was a very, you know, he pretty much said -- one of the  
12 things that he also said was that, like I couldn't come back  
13 until I adhered to the dress code, so I didn't really know. I  
14 had never been really put in that position by a boss, or like I  
15 was uncertain how to proceed.

16 And so I called the store that day, the day of my next  
17 shift, and I spoke to Gersi.

18 JUDGE SOTOLONGO: Was your next shift the following day?

19 THE WITNESS: No, it was -- it was the day after, so I had  
20 a day off, and then it was the following day after that.

21 JUDGE SOTOLONGO: So it would have been the 24th?

22 THE WITNESS: Yes.

23 JUDGE SOTOLONGO: June 24th?

24 THE WITNESS: Yes.

25 JUDGE SOTOLONGO: Okay. So you called the store and tell

1 us what happened.

2 THE WITNESS: Yeah, and I spoke with Gersi this time and  
3 he said -- I sort of explained the situation to him, and he  
4 said okay, well, you can come in and if you like, we can talk,  
5 I'm here till 2:00 p.m. And so I went to the store. I didn't  
6 work a shift but I did speak with Gersi at around 12:00 p.m.

7 Q. BY MR. PETERSON: And this was the 24th, when you were  
8 scheduled to work?

9 A. Yes, I believe it was the 24th.

10 JUDGE SOTOLONGO: And were you schedule to work the 1:30  
11 to 9:30 shift, as on the 22nd, or a different shift?

12 THE WITNESS: I think on the 24th it was a 10:00 to 6:00  
13 or an 11:00 to 7:00. It was a mid-shift.

14 JUDGE SOTOLONGO: So you went there after your shift  
15 already started, to speak to this person?

16 THE WITNESS: Correct.

17 JUDGE SOTOLONGO: Okay.

18 Q. BY MR. PETERSON: Did you call him before your shift was  
19 scheduled to begin?

20 A. I think I called him like -- I think it was after.

21 Q. So sometime close to noon, when you --

22 A. Yes. Yes.

23 Q. And then when you arrived on the 24th, were you wearing a  
24 mask?

25 A. Yes, I was.

1 Q. Which mask?

2 A. It's a mask that says, "All power to the people." I have  
3 that one, as well.

4 MR. BROWN: I couldn't hear that answer.

5 THE WITNESS: Oh, I'm sorry. It's a mask that says, "All  
6 power to the people."

7 MR. BROWN: "All power to the people."

8 Q. BY MR. PETERSON: Do you have that mask with you?

9 A. I do.

10 Q. Can you show it to us?

11 A. Of course.

12 JUDGE SOTOLONGO: Again, the witness is showing us a black  
13 mask with white lettering. It says, "All power to the people"  
14 in white lettering. It also has a fist in the middle. It's  
15 the upraised fist in the middle of the mask. It says, "All  
16 power" at the top, "to the" -- other side of the fist, and  
17 "people" on the bottom of the fist. Is that a correct  
18 description?

19 JUDGE SOTOLONGO: Take a picture of that and --

20 MR. PETERSON: I will, Your Honor.

21 JUDGE SOTOLONGO: What's the name of the person that you  
22 spoke to on June 24th?

23 THE WITNESS: I spoke to Gersi, and then I spoke to a  
24 woman named Allison. She was the specialty team leader.

25 JUDGE SOTOLONGO: And the first person you mentioned was -

1 - what's the name of the first person?

2 THE WITNESS: Oh, Gersi, on the 24th, I spoke with Gersi.

3 JUDGE SOTOLONGO: Gersi. And what's his or her --

4 THE WITNESS: It's a male or he's a male.

5 MR. BROWN: If I could, Your Honor, the name is Gersi  
6 Mollaj, M-o-l-l-a-j, and he was the associate store team  
7 leader. And Gersi is G-e-r-s-i.

8 JUDGE SOTOLONGO: Very well. Proceed.

9 Q. BY MR. PETERSON: Did you meet with them together?

10 A. I did, yes.

11 Q. And did you clock in before you went to the meeting?

12 A. I don't believe so.

13 Q. How long did this meeting last?

14 A. Maybe 30 to 40 minutes.

15 Q. And who did most of the talking?

16 A. I would say it was mainly me. There were points where he  
17 sort of added some things in.

18 Q. Did Allison speak?

19 A. Not really. If so, very briefly.

20 Q. How did the meeting begin?

21 A. So the meeting began -- excuse me. I sort of explained  
22 what had happened, to Gersi, because he wasn't there on the  
23 22nd, and, you know, explained my mask and that, you know, I  
24 had been wearing a "Black Lives Matter" mask, and that the week  
25 prior I was wearing a "No justice, no peace" mask and was not



1 asked to remove the mask and that, you know, apparently it was  
2 an issue of the dress code policy, and I sort of pointed out  
3 some of the inconsistencies just in the dress code policy,  
4 overall. And Gersi --

5 Q. I'm sorry. Can you describe what did you point out to  
6 him?

7 A. So, some inconsistencies just in general in the dress code  
8 policy.

9 Q. Did you specify what those inconsistencies were?

10 A. Yes. Like, for example, I work in prepared foods, and we  
11 have a more specific dress code policy, because we work with  
12 like sharp objects, and like chemicals, and we're like around  
13 hot foods and hot dishes, et cetera. So in the prepared foods  
14 section, we're only permitted to wear either chef pants or  
15 jeans. Yoga pants and leggings and pants of that nature, are  
16 simply not allowed.

17 And I can say quite confidently that I maybe wore jeans  
18 maybe the first --

19 MR. BROWN: Objection, this isn't -- is this what she  
20 said? Or is this now her explaining?

21 JUDGE SOTOLONGO: You're right. You need to tell us what  
22 was said, rather than -- if you said this, that's fine, but  
23 don't give a sort of explanation of why you're -- just tell us  
24 what you said.

25 THE WITNESS: Okay.

1 Q. BY MR. PETERSON: I appreciate your giving context, but  
2 I'll ask for the context after you --

3 A. Sure.

4 Q. -- describe the words that were said.

5 A. Sure, absolutely. My apologies. So yeah, I pretty much  
6 told him that, you know, that there's a certain dress code in  
7 prepare foods and I was not adhering to -- I wore leggings a  
8 lot. There were times that I wore like tee-shirts that weren't  
9 like Whole Foods specific, and I was never asked to go home.  
10 Yeah.

11 Q. That's what you told him?

12 A. Yes.

13 Q. What was his response?

14 A. He -- it was almost kind of like he really didn't have a  
15 response. He just kind of made some point, and then circled  
16 back to the whole I needed to be in compliance with the dress  
17 code, in order to work.

18 Q. Anything else you remember about that conversation?

19 A. Yes. On the topic of the "Black Lives Matter" mask, when  
20 I was telling him about my wearing the "Black Lives Matter"  
21 mask and being told that I couldn't work, he made the point  
22 that I could be wearing -- I couldn't wear a "Black Lives  
23 Matter" mask, but I could wear like a "Black Lives Matter"  
24 shirt, for example, to which I told him that it was very  
25 interesting that he would say that, because the day before, or

1 the day prior, a fellow co-worker of mine was actually sent  
2 home for wearing a "Black Lives Matter" tee-shirt.

3 Q. This is what you told Gersi?

4 A. Yes. And again, he really didn't have much of a response.  
5 He just sort of, again, circled back to the point that I needed  
6 to, you know, I couldn't wear a "Black Lives Matter" mask, I  
7 need to be in compliance with the dress code.

8 JUDGE SOTOLONGO: Now, do you have to wear an apron in the  
9 particular job you worked?

10 THE WITNESS: Yes, I have to wear either a chef coat or an  
11 apron, yes.

12 JUDGE SOTOLONGO: Now, would that apron or chef coat  
13 normally cover say a tee-shirt or -- a tee-shirt with any kind  
14 of lettering, would that be covered by the apron or by the  
15 chef's coat?

16 THE WITNESS: I would say probably about 90 percent.  
17 There were times where, like for example, I would wear a tee-  
18 shirt, and like I could still see some of the wording. Not all  
19 of it, but some of the wording, if I were wearing an apron.

20 JUDGE SOTOLONGO: All right. And how do you know about  
21 this other worker who was sent home for wearing -- allegedly  
22 for wearing the "Black Lives Matter" tee-shirt?

23 THE WITNESS: She -- she informed me.

24 JUDGE SOTOLONGO: Okay. All right. And what department  
25 was this person?

1           THE WITNESS: She was a bistro, so she worked in the  
2 coffee department.

3           JUDGE SOTOLONGO: Would this be a type of job where you  
4 also wear an apron on top of your clothing?

5           THE WITNESS: Yes, I believe so.

6           JUDGE SOTOLONGO: So would you know if that lettering was  
7 visible or not?

8           THE WITNESS: I don't know.

9           JUDGE SOTOLONGO: Okay.

10          Q.    BY MR. PETERSON: Anything else you recall about that  
11 conversation?

12          A.    Just that he sort of -- after we were done talking, he  
13 again reiterated that, you know, in order for me to be able to  
14 work, I need to be in compliance with the dress code, and as  
15 the meeting was wrapping up, he, like said, okay, thank you,  
16 I'll let you know if anything changes.

17          Q.    When you brought up the tee-shirt issue, did he respond?

18          A.    He --

19          MR. BROWN: Objection, it's asked and answered.

20          JUDGE SOTOLONGO: Yes.

21          Q.    BY MR. PETERSON: And so did you report to work that day  
22 that you were -- on the 24th when you were scheduled to work?

23          A.    I did not.

24          JUDGE SOTOLONGO: And is that because you still wanted to  
25 wear your "Black Lives Matter" or the All Power to the People

1 mask?

2 THE WITNESS: Correct.

3 JUDGE SOTOLONGO: So it was your decision that you -- this  
4 was your decision, I want to wear that mask, and because they  
5 told me I cannot come to work if I wear that mask, I choose not  
6 to come to work?

7 THE WITNESS: Correct.

8 JUDGE SOTOLONGO: I see. Go ahead.

9 Q. BY MR. PETERSON: Did Gersi tell you during the meeting  
10 that -- as I understand it, you arrived after your shift was  
11 supposed to begin; is that correct?

12 A. Correct.

13 Q. Did Gersi say that you could work that day, if you --

14 MR. BROWN: Objection, leading.

15 JUDGE SOTOLONGO: Yes, that's leading, sustained.

16 Q. BY MR. PETERSON: Did Gersi say anything about that you  
17 would -- you've said what Gersi said.

18 A. Correct.

19 Q. Did you have the impression that you could work that day?

20 A. I did not.

21 Q. When was your next shift?

22 A. I would -- maybe that Saturday, but I have to say, I don't  
23 entirely recall.

24 Q. Would looking at your affidavit refresh your recollection  
25 as to the date?

1 A. Yes.

2 MR. BROWN: If it speeds things up, it was June 27th.

3 JUDGE SOTOLONGO: You can just say, I mean, you don't have  
4 an objection -- did you recall saying -- your affidavit -- a  
5 person doesn't recall, then you can show her the affidavit  
6 and --

7 MR. PETERSON: Sure.

8 JUDGE SOTOLONGO: That will jog her memory, otherwise you  
9 can just --

10 MR. BROWN: I can speed it up. We know the dates. That's  
11 all in the documents.

12 JUDGE SOTOLONGO: Okay, I think -- all right. So go  
13 ahead. What date you saying in her affidavit she worked next?

14 Q. BY MR. PETERSON: Your affidavit says your next shift was  
15 June 27th. Does that sound correct?

16 A. Correct, yes.

17 Q. Did you report to work that day?

18 A. I did.

19 Q. Do you recall in your affidavit that it says that you did  
20 not work on June 27th?

21 A. Okay, yes, yes. I believe I called out that day.

22 Q. So having refreshed your recollection, what happened on  
23 the 27th?

24 A. I believe that was the day that I called out, and then I  
25 believe that I had additional correspondence with Daniella. I

1 told her that, you know, I think I said something along the  
2 lines of like I'm not really sure like how to proceed, because  
3 I'm being told --

4 JUDGE SOTOLONGO: On the phone or --

5 THE WITNESS: Via text message.

6 JUDGE SOTOLONGO: Okay. So tell us -- so you were  
7 scheduled to work on the 27th. First of all, do you recall  
8 what shift you were to work that day?

9 THE WITNESS: I believe it was like maybe a 2:30 to 10:30.

10 JUDGE SOTOLONGO: So what did you do? Did you call before  
11 your shift started or text this person during the course of the  
12 day?

13 THE WITNESS: I believe I called before my shift started,  
14 and then I text Daniella later on.

15 JUDGE SOTOLONGO: And when you called, who did you speak  
16 to?

17 THE WITNESS: I don't recall.

18 JUDGE SOTOLONGO: Okay. And somebody you would call  
19 normally to report that you weren't coming to work?

20 THE WITNESS: Yeah. So normally if -- if you called out,  
21 you would call your department and speak to a team leader to  
22 let them know.

23 JUDGE SOTOLONGO: And is that what you did?

24 THE WITNESS: Yes.

25 JUDGE SOTOLONGO: And you said you're not coming to work

1     that day?

2             THE WITNESS: I believe so, yes.

3             JUDGE SOTOLONGO: Did you explain why in this phone  
4     conversation?

5             THE WITNESS: I believe so. I think I said it was, you  
6     know, I was told I couldn't come back to work unless I, you  
7     know, adhered to the dress code policy.

8             JUDGE SOTOLONGO: All right. And then later on your  
9     texted with Daniella?

10            THE WITNESS: Yes.

11            JUDGE SOTOLONGO: Okay. Tell us what the exchange in the  
12     text says.

13            THE WITNESS: Yeah. So I believe I said like something  
14     along the lines of, you know, I gave her my reasoning as to why  
15     I was wearing the mask, and like I, you know, I'm not able to  
16     come back until -- I'm apparently not able to come back until I  
17     adhere to the dress code policy. And again, I explained to her  
18     some of my reasoning for why I was -- I was doing what I was  
19     doing, and then I think she said something along the -- she  
20     like expressed support for me, and then she said that the two  
21     incidences, meaning I guess the 24th and the 27th, would count  
22     as one incident, so it wouldn't be two absences, it would only  
23     be one absence.

24            And then I think she told me that during my next shift,  
25     Carol would be back from vacation and that she would be willing



- 1 to talk to me, if I was willing to talk to her.
- 2 Q. BY MR. PETERSON: And what was Carol's position, again?
- 3 A. She's like the head store leader.
- 4 Q. And do you recall when your next shift was?
- 5 A I believe it was the following Monday.
- 6 Q Does June 29th sound correct?
- 7 A. Yes.
- 8 Q. Do you recall what shift you were scheduled to work on
- 9 June 29th?
- 10 A. I believe it was an evening shift, either 2:30 to 10:30 or
- 11 1:30 to 8:30.
- 12 Q. And do you recall saying 1:30 to 9:30 in your affidavit?
- 13 A. Yes.
- 14 Q. Does that sound accurate?
- 15 A. Yes.
- 16 Q. And did you report at your normal scheduled time?
- 17 A. I did.
- 18 Q. Were you wearing a mask?
- 19 A. I was.
- 20 Q. What mask were you wearing?
- 21 A. "Black Lives Matter".
- 22 Q. Which one?
- 23 A. It was the mask that said "Black Lives Matter", the black
- 24 mask with the white wording.
- 25 Q. And did you clock in?

1 A. I did.

2 Q. And what happened next?

3 A. I clocked in. I reported to the deli station, and I  
4 believe it was Daniella that told me that, like Carol was ready  
5 to speak to me, so she brought me upstairs to speak with Carol.

6 Q. Was anyone else present?

7 A. Yes, Nick was present and Daniella was present and Carol  
8 and myself.

9 Q. How long did this meeting last?

10 A. Maybe 35 to 40 minutes.

11 Q. How did the meeting begin?

12 A. It sort of began very similar to the rest, like we -- sort  
13 of explaining that, you know, a week prior, like, you know, I'm  
14 being told about this dress code, but a week prior I was  
15 wearing a "No justice, no peace" mask and, you know, I had  
16 worked with various members from leadership and nobody said  
17 anything. I brought up the incident with my co-worker at the  
18 time, John, and I was like, you know, I'm working next to --  
19 you know, you're asking me to remove this mask and I'm  
20 literally working next to somebody who made a racial remark to  
21 me, and we talked about that very briefly.

22 And then I just sort of gave her like my reasoning behind  
23 like why I was wearing the mask and why I was so passionate  
24 about the messaging, and then we sort of got into --

25 Q. Can you give some detail of what you said?

1 A. Yeah.

2 JUDGE SOTOLONGO: Tell us specifically what you said about  
3 the reason that you were wearing the mask. So go ahead, tell  
4 us --

5 THE WITNESS: Yeah.

6 JUDGE SOTOLONGO: Tell us what you said to her.

7 THE WITNESS: Okay. I said something along the lines of  
8 like it's a message that I'm like very passionate about.  
9 There's like banners all in the store that like sort of express  
10 similar things to what my mask represents. And like I said,  
11 it's a message that I'm passionate about. It's a message that  
12 I think that people need to see, and I think I brought up, you  
13 know, my grandparents and just sort of various reasons as to  
14 why like the message -- I was so passionate about the message.

15 Q. BY MR. PETERSON: And did any of the managers respond to  
16 your comments about the reasons why you were wearing the mask?

17 A. Not -- not verbally. They each sort of got emotional at  
18 one point or another.

19 Q. What do you mean by got emotional?

20 A. Well, like Daniella started to cry. Nick had started to  
21 cry. There was a point on that topic, when I was speaking,  
22 when I was talking to Carol directly. Nick and Daniella were  
23 still obviously there, and she got emotional when she was  
24 saying that, you know, like if it was up to -- if it was up to  
25 her, if it was called, I believe she said Carol Foods Market,

1 she would let me wear the mask. She was emotional while saying  
2 that.

3 Q. Anything else you recall about the conversation?

4 A. Yeah. Excuse me. We briefly touched on sort of the  
5 inconsistencies in the dress code policy.

6 JUDGE SOTOLONGO: What exactly did you say about that and  
7 what exactly did they say about that, if anything?

8 THE WITNESS: So I reiterated the same things to her that  
9 I did to Gersi, that, you know, I prepare foods, I wear  
10 leggings very often, there are times where I'm not wearing a  
11 Whole Foods specific shirt. I witnessed a co-worker show up  
12 wearing shorts, and she -- she didn't really have a response.  
13 She just sort of came back to the whole, you know, you need to  
14 be in compliance with the dress code.

15 JUDGE SOTOLONGO: Did they say to you -- the dress code,  
16 whether the dress code specifically prohibited you from doing  
17 -- was it preventing you from wearing any, for example, any  
18 messaging of any type? Or was it just specific to "Black Lives  
19 Matter"?

20 THE WITNESS: Well, with regards to like, for example,  
21 like wearing like, you, at Whole Foods, for example, they  
22 provide us with Whole Foods specific shirts, shirts that say  
23 "Whole Foods."

24 JUDGE SOTOLONGO: That have a logo that Whole Foods --

25 THE WITNESS: Yeah, that have a logo about Whole Foods, or

1 like a message about Whole Foods, and if you don't wear those  
2 shirts while you're wearing an apron, you're not in compliance  
3 with the dress code, and there are times -- I actually have an  
4 example of a shirt that I would wear quite often, that was not  
5 a Whole Foods shirt.

6 Q. BY MR. PETERSON: I'll ask you to show that shirt to us as  
7 soon as we're done talking about this conversation. Anything  
8 else you recall about the conversation?

9 A. No, that was pretty much it, just we talked about those  
10 points and she pretty much said that, you know, if --  
11 essentially that if you're not in compliance with the dress  
12 code, then you cannot work.

13 Q. And did you say anything in response to that?

14 A. I think I said like okay.

15 Q. And what did you do next?

16 A. I went downstairs and I clocked out.

17 Q. Still wearing the "Black Lives Matter" mask?

18 A. Correct.

19 Q. You said you have a tee-shirt with you?

20 A. I do.

21 Q. Will you show that to the Court?

22 JUDGE SOTOLONGO: Okay. Then you're going to take  
23 pictures of all these different masks and tee-shirts and all  
24 that?

25 MR. PETERSON: Yes, Your Honor.

1 JUDGE SOTOLONGO: We can introduce them as exhibits.

2 MR. PETERSON: Yes, Your Honor.

3 MR. BROWN: Your Honor, I object to the tee-shirt, as to  
4 fundamentally what possible relevance this has.

5 JUDGE SOTOLONGO: I don't know. We'll see the tee-shirt.

6 THE WITNESS: This is an example of a tee-shirt that I  
7 would wear.

8 MR. BROWN: Objection as to relevance, Your Honor. We've  
9 been through this in every city now about inconsistencies or  
10 alleged inconsistencies.

11 MR. PETERSON: Which are a very critical part of the case.

12 JUDGE SOTOLONGO: I will allow it. I would allow it and  
13 you'll have to make an argument as to how relevant it is, so  
14 all right. So, again, will you hold it up, please?

15 THE WITNESS: Of course.

16 JUDGE SOTOLONGO: The tee-shirt says, the front of it --  
17 the front says, "Purpose Tour." It's a beige colored tee-  
18 shirt. It says lettering, big letters, said, "Purpose Tour,"  
19 reddish or rust type color, and then it says Justin Bieber in  
20 black lettering, 2016 below that and then on the back -- on the  
21 back it says, "My mama don't like you," in big, black letters.  
22 All right. So you wore that tee-shirt on one occasion or more  
23 than one occasion?

24 THE WITNESS: On multiple occasions.

25 JUDGE SOTOLONGO: On multiple occasions. And you wore an

1 apron over that; is that correct?

2 THE WITNESS: I did. But the lettering on the back is  
3 very visible. So like every time I would turn my back to a  
4 customer, or to --

5 JUDGE SOTOLONGO: So the apron only covers the front?

6 THE WITNESS: Correct.

7 JUDGE SOTOLONGO: Not the back. Okay. The style, a  
8 string in the back, but --

9 THE WITNESS: Yeah, just a string.

10 JUDGE SOTOLONGO: I see, okay. All right. Now, what is  
11 your understanding of what type of clothing you're supposed to  
12 wear that conforms with the dress code? Is there a Whole Foods  
13 tee-shirt, or a tee-shirt with no lettering in it?

14 THE WITNESS: My understanding was that we get Whole Foods  
15 specific shirts that say Whole Foods on them, and I was told  
16 that if it was not like a Whole Foods shirt, then it wasn't in  
17 compliance with the dress code, so any other shirts that had  
18 like any other writing on them, that was not related to Whole  
19 Foods, is not in compliance with the dress code.

20 JUDGE SOTOLONGO: How about a tee-shirt that had no  
21 writing and was a black tee-shirt, let's say?

22 THE WITNESS: Yeah, I think that that was okay, as well.

23 JUDGE SOTOLONGO: Your understanding, that would be within  
24 the dress code?

25 THE WITNESS: Yes.

1 JUDGE SOTOLONGO: So your understanding of the dress code  
2 is that any wording that was not Whole Foods compliant, that  
3 said Whole Foods, was in non-compliance with the dress code?

4 THE WITNESS: Correct.

5 JUDGE SOTOLONGO: Okay.

6 Q. BY MR. PETERSON: When did you get that understanding?

7 A. Regarding the shirts, very early on. Like I said, we were  
8 provided with various Whole Foods shirts, and they would always  
9 tell us, like if you're going to wear an apron, you have to be  
10 wearing -- it has to be a shirt with Whole Foods wording.

11 Q. And that was sometime, you said, very early on?

12 A. Yes.

13 Q. You started working April, 2017. How close to April,  
14 2017, was it that you were informed of this?

15 A. Within the first couple months.

16 Q. And did you see other people wearing shirts similar to the  
17 one -- or with lettering that people could see?

18 MR. BROWN: Objection.

19 MR. PETERSON: Not Whole Foods?

20 MR. BROWN: Objection, relevance. I'll keep making it.  
21 You can make a ruling.

22 JUDGE SOTOLONGO: Mr. Brown, you have a standing  
23 objection, duly noted. I'm going to overrule. I'm going to  
24 allow, you know, counsel to explore some of this. Go ahead.

25 Q. BY MR. PETERSON: I guess so we'll start with the Bieber



1 shirt you were wearing. About how many times would you say you  
2 wore that shirt?

3 JUDGE SOTOLONGO: She said multiple times. You cannot  
4 give a specific -- can you?

5 THE WITNESS: No, it was multiple times.

6 JUDGE SOTOLONGO: All right.

7 Q. BY MR. PETERSON: And I guess I'm asking close to three,  
8 or closer to 20?

9 A. Maybe like five or six.

10 Q. Did anyone at the store ever comment on the shirt that you  
11 were -- on that Justin Bieber shirt?

12 A. Yeah, one of my -- one of my co-workers, I guess,  
13 commented on it.

14 Q. What was the comment?

15 MR. BROWN: Objection. Your Honor, now we have a co-  
16 worker commenting on it, not even a leader.

17 JUDGE SOTOLONGO: It doesn't matter. Sustained.

18 Q. BY MR. PETERSON: It was visible. Other than the shirt  
19 you described, did you ever notice anyone wearing visible  
20 writing, marking or logos, that was not Whole Foods, at work?

21 A. I did.

22 Q. With what frequency?

23 A. I believe there were like some band tee-shirts, Nike tee-  
24 shirts, Under Armour.

25 Q. How often would you see employees wearing shirts like

- 1 this?
- 2 A. I would say often.
- 3 Q. Like weekly, monthly?
- 4 A. Maybe monthly.
- 5 Q. Okay. So the 29th you clocked out after the meeting?
- 6 A. Correct.
- 7 Q. Do you remember when you were scheduled to work next?
- 8 A. I believe it was like later on that week, or maybe the
- 9 following week.
- 10 Q. Did you report to work for your next scheduled shift?
- 11 A. I did.
- 12 Q. And what happened? I guess --
- 13 JUDGE SOTOLONGO: Do you have a specific date? You can
- 14 refresh her recollection. Do you have any objection to that,
- 15 Mr. Brown?
- 16 MR. BROWN: July 1st.
- 17 JUDGE SOTOLONGO: July 1st, okay.
- 18 THE WITNESS: Yes, yes. I showed up to work.
- 19 Q. BY MR. PETERSON: And what were you wearing on July 1st?
- 20 A. I was wearing my "Black Lives Matter" mask.
- 21 Q. Did you clock in?
- 22 A. I did.
- 23 Q. And were you able to work your entire shift?
- 24 A. I was not.
- 25 Q. Why not?

- 1 A. I was called upstairs to speak with a store leader.
- 2 Q. Who called you upstairs?
- 3 A. I believe it was Carol.
- 4 Q. How long into your shift?
- 5 A. Maybe five minutes.
- 6 Q. And was anyone else present?
- 7 A. I don't recall.
- 8 Q. And how long did this meeting last?
- 9 A. Maybe 15 minutes.
- 10 Q. And how did the meeting begin?
- 11 A. Very much the same. I think she would say like, you know,
- 12 we want you to work, we're happy that you're a worker here, but
- 13 in order to work, you need to be in compliance with the dress
- 14 code.
- 15 Q. And what was your response?
- 16 A. To which I responded that yes, I'm here, I'm willing, I'm
- 17 ready, I'm able to work, I'm, you know, the same person that
- 18 showed up last week wearing "No justice, no peace" mask. I'm
- 19 the same worker that I've always been, I'm here, willing, ready
- 20 and able to work. I'm not volunteering to leave, you are
- 21 asking me to leave.
- 22 Q. And any discussion of any further discussion about the
- 23 mask?
- 24 A. No, I don't believe so.
- 25 Q. And what did you do at the end of the meeting, or how did

1 the meeting end, I should say?

2 A. Yes. Again, she like reiterated, like we have work for  
3 you, but you would need to take off the "Black Lives Matter"  
4 mask in order to work, and I just kind of said thank you, or  
5 something.

6 Q. And did you take off the mask and go to work?

7 A. I did not.

8 Q. What did you do?

9 A. I clocked out.

10 Q. Do you recall your next shift was July 4th?

11 A. Correct.

12 Q. Did you report to work?

13 A. I did not.

14 Q. What did you do?

15 A. I called out.

16 Q. And who did you call, or do you recall who you spoke with?

17 A. I believe I spoke to Carol and just told her that I was  
18 calling out.

19 Q. Did you say why you were calling out?

20 A. I think on the phone I said something like, you know, I  
21 think I said something like I'm going to come in, like wearing  
22 my "Black Lives Matter" mask, and I know that we'll probably  
23 like get into the whole talk again, so yeah, I'm calling out.

24 Q. And when you call out, do you have like time off or leave  
25 that you can use?

1 A. You do, but I don't think that I had any at that time.

2 JUDGE SOTOLONGO: Is that because you had used it up in  
3 the period between March and June, when you were gone, or --

4 THE WITNESS: I don't believe that that was -- I think  
5 because it was COVID related, it was separate from -- from  
6 that, from like my specific time off.

7 JUDGE SOTOLONGO: So you had no leave to earn off, so to  
8 speak?

9 THE WITNESS: Yes, correct.

10 Q. BY MR. PETERSON: Do you recall your next shift being July  
11 6th?

12 A. Correct.

13 Q. Did you report to work on July 6th?

14 A. I did.

15 Q. Were you wearing a mask?

16 A. I was.

17 Q. What mask were you wearing?

18 A. A "Black Lives Matter" mask.

19 Q. Which one?

20 A. The same one. I only have the one that says "Black Lives  
21 Matter".

22 Q. I just ask, because there's -- to distinguish that from  
23 the "No justice, no peace" mask.

24 A. Of course.

25 Q. And what happened? Did you clock in on July 6th?

- 1 A. I did.
- 2 Q. Were you able to complete your shift?
- 3 A. I was not.
- 4 Q. What happened?
- 5 A. The usual. I was called upstairs and talked to
- 6 management. She would say like we have work ready for you, if
- 7 you take off the mask and comply with the dress code. And then
- 8 I would just reiterate that I'm willing, I'm here, I'm ready to
- 9 work, I'm not volunteering to go home, I would love to work,
- 10 and then we would circle back to the whole, you know, you need
- 11 to be in compliance with the dress code to work, and if not,
- 12 you can't work.
- 13 Q. And how did the meeting end? I'm sorry, and who was this?
- 14 You said management. Do you remember which manager?
- 15 A. I believe it was Carol again.
- 16 Q. And do you recall how the meeting ended?
- 17 A. Just with me kind of saying thank you, I think, and
- 18 getting up and leaving.
- 19 Q. Did you clock out?
- 20 A. I did.
- 21 Q. Do you recall your next shift being July 8th?
- 22 A. Yes.
- 23 Q. Did you report to work on July 8th?
- 24 A. I did.
- 25 Q. Were you wearing a mask?

1 A. I was.

2 Q. What mask were you wearing?

3 A. The "Black Lives Matter" mask.

4 Q. Were you able to complete your shift?

5 A. I was not.

6 Q. What happened?

7 A. I was called upstairs again, and talked to a manager. I  
8 think this time it may have been Nick, and it was the same  
9 conversation, we have work ready for you if you comply with the  
10 dress code. And I said, you know, I'm willing, able and ready  
11 to work, you know, I'm no different, I'm the same person that I  
12 was when I first started working here, and then again circling  
13 back to the -- if you're not in compliance with the dress code,  
14 you can't work.

15 MR. PETERSON: Permission to approach the witness, Your  
16 Honor.

17 JUDGE SOTOLONGO: Okay.

18 MR. PETERSON: What's marked as General Counsel's Exhibit  
19 56. There's six pages there.

20 **(General Counsel Exhibit 56 marked for identification.)**

21 Q. BY MR. PETERSON: Go ahead and look through that and let  
22 me know if you recognize these documents. I guess the first  
23 three pages, for now.

24 A. Yes, I recognize them.

25 Q. And have you seen these before?

1 A. I have.

2 Q. What are they?

3 A. They're corrective actions.

4 Q. Is that your signature with the date, July 8th?

5 A. It is.

6 Q. And how did you come to sign this document?

7 A. I was informed that -- that I was -- that I had like  
8 unsatisfactory attendance.

9 Q. Was this during the meeting you were describing?

10 A. Yes. Yeah, I was informed about my unsatisfactory  
11 attendance and I had to sign these documents.

12 Q. Was there any discussion about the corrective action?

13 A. Yeah, I think -- it was explained to me that when I was  
14 showing up to work, despite the fact that I was showing up to  
15 work, they were counting them as absences, to which I replied,  
16 well, you know, I'm not abandoning my job, I'm showing up, I'm  
17 here. And then they reiterated that they were counting them as  
18 absences and provided me with this paperwork.

19 Q. And when you say they, do you remember who was speaking?

20 A. I believe it was Carol.

21 JUDGE SOTOLONGO: All right. I'm going to see if I can  
22 cut this short a little bit, because I think I see somewhat of  
23 a repetitive pattern going on here. Rather than going through  
24 every instance, I think we can cut it short by saying this. In  
25 the next to the last page of this corrective action as



1 evidence, there's a box that says, "Specific details." Can you  
2 see that? Next to the last page?

3 THE WITNESS: Yes.

4 JUDGE SOTOLONGO: All right. And then it says, "Haley has  
5 four absences in 30 days." Do you see that?

6 THE WITNESS: Yes.

7 JUDGE SOTOLONGO: And then it lists July 8th, left early.  
8 It says July 11th, scheduled 1:30, left early. July 15th,  
9 scheduled 10:30, left early, and the schedule -- in each of  
10 those occasions the same thing happened, you showed up with  
11 your "Black Lives Matter" mask, you were brought upstairs and  
12 told you can't wear that on the premises, that's a violation of  
13 the dress code, and you had a choice of taking it off and  
14 working.

15 THE WITNESS: Correct.

16 JUDGE SOTOLONGO: Or clocking out; is that correct?

17 THE WITNESS: Yeah. Yeah.

18 JUDGE SOTOLONGO: On each of these occasions that's what  
19 happened on each of those dates?

20 THE WITNESS: Correct.

21 JUDGE SOTOLONGO: Okay. So I just wanted to clarify --  
22 so, one manager or another, or was it the same manager every  
23 time?

24 THE WITNESS: It was -- it varied between Carol and Nick.  
25 I believe it was mainly Carol. I believe one of the times it

1 may --

2 JUDGE SOTOLONGO: But essentially the same thing occurred.  
3 You showed up with the mask, you were told that you -- it was  
4 not in compliance with the dress code, and you had a choice of  
5 staying and working or clocking out and leaving, and you chose  
6 to do the latter?

7 THE WITNESS: Correct.

8 JUDGE SOTOLONGO: Okay. Very well.

9 Q. BY MR. PETERSON: And just to be clear, the fifth page --  
10 I'm sorry, the last three pages, is that your signature on July  
11 25th?

12 A. Yes.

13 Q. And so is that a corrective action that you received in  
14 addition to the first three pages?

15 A. Correct.

16 Q. Okay. On Page 3 there's some handwritten notes. Are  
17 those yours?

18 A. They are, yes.

19 Q. And why did you write those notes?

20 A. Just to reiterate my point and my position, that I was --  
21 I, you know, I came in wearing the "No justice, no peace" mask,  
22 and I was able to work, and now I'm being told that I'm not  
23 able to work, despite the fact that I am showing up to my job  
24 and not abandoning my job, and showing up ready, willing and  
25 able to work.

1 JUDGE SOTOLONGO: That was the one dated July the 8th,  
2 signed July the 8th?

3 THE WITNESS: Yes.

4 Q. BY MR. PETERSON: And then same question on the last page  
5 of General Counsel's 56. Are those handwritten notes yours?

6 A. Yes.

7 Q. And why did you write those notes?

8 A. Again, just sort of to reiterate that I'm by no means  
9 volunteering to go home, I'm ready to do my job, I'm able to do  
10 my job and willing to do my job, and I was there to do my job.

11 Q. And that was on July 25th?

12 A. Correct.

13 Q. Do you recall were you scheduled to work after July 25th?

14 A. Yes, I was.

15 Q. What was your understanding of what the July 25th warning  
16 meant?

17 A. I think initially I thought it was a warning, but then I  
18 believe Carol said my next shift we would talk about  
19 separation, we would discuss separation.

20 Q. Carol said your next shift, you would discuss separation?

21 A. I believe so.

22 JUDGE SOTOLONGO: Your next shift or your next absence, if  
23 you were to do this again?

24 THE WITNESS: My next shift.

25 JUDGE SOTOLONGO: Okay.

- 1 Q. BY MR. PETERSON: Do you recall when your next shift was?
- 2 A. I believe it was August 1st.
- 3 Q. And did you report to work as scheduled?
- 4 A. I did.
- 5 Q. Were you wearing a mask?
- 6 A. I was.
- 7 Q. Which mask were you wearing?
- 8 A. I was wearing my "Black Lives Matter" mask, but the
- 9 wording wasn't showing.
- 10 Q. What do you mean, the wording wasn't showing?
- 11 A. It was -- it was just inside out, so it was just a plain
- 12 black mask.
- 13 Q. Did you clock in?
- 14 A. I did.
- 15 Q. Were you able to complete your shift?
- 16 A. I was not.
- 17 Q. How long were you able to work?
- 18 A. I think that day I clocked in and they were actually like
- 19 waiting in the back for me, and just brought me right upstairs.
- 20 Q. And who is they?
- 21 A. I believe it was Carol.
- 22 Q. Do you recall if Gersi was present?
- 23 A. Gersi was present.
- 24 Q. Anyone else present that you recall?
- 25 A. I believe that was it.

1 Q. How did that conversation begin?

2 A. I came in and I sat down and she said okay, as I told you  
3 last time, we're here to talk about separation and she gave me  
4 this paperwork, I think, or showed me something, that I believe  
5 I had to sign, and then when I was done signing it, she said,  
6 you know, I have no doubt that you'll be successful in the  
7 future, and we wish you all the best.

8 Q. Do you recall any other details about that discussion?

9 A. Yes.

10 Q. What else do you recall?

11 A. I believe I gave her the papers for the suit, for the  
12 class action suit, and she just kind of, in my opinion, very  
13 dismissively, just like put them down, and just kept talking.

14 Q. What class action suit are you referring to?

15 A. I believe it was the papers for this particular suit, with  
16 like all of the various locations.

17 Q. Were you involved in a lawsuit at that point?

18 A. Yes.

19 Q. And you're not sure -- do you know which entity the  
20 lawsuit -- with which entity the lawsuit was filed?

21 A. I don't.

22 JUDGE SOTOLONGO: This is the lawsuit filed by the Liss-  
23 Riordan law firm?

24 THE WITNESS: Yes.

25 JUDGE SOTOLONGO: Okay.

1 Q. BY MR. PETERSON: And what was your understanding as far  
2 as your continued employment at Whole Foods at the end of that  
3 meeting?

4 A. That I was terminated.

5 Q. During the time period between your return to work on June  
6 17th and your termination on August 1st, did you have any  
7 conversations with other co-workers about wearing the mask?

8 A. I did.

9 Q. Co-workers at your own store?

10 A. Yes.

11 Q. About how many did you speak with about the mask?

12 A. I would say like upwards of five or six.

13 Q. And do you remember the dates of these conversations?

14 A. They were sporadic. I don't remember the exact dates, but  
15 they definitely took place while I was like leaving a shift or  
16 like over text message.

17 Q. So the conversations that occurred at work, can you  
18 describe the first conversation you recall?

19 A. Yeah. It was --

20 Q. You don't have to name the names of --

21 A. Yeah. Of course, some of my -- like maybe one or two of  
22 my co-workers, like came up to me and said like, that I was  
23 brave, and that like, you know, they understand why I was doing  
24 it, and like they like stand in solidarity with me, and then  
25 that sort of became like a recurrent thing, where like other

1 co-workers sort of expressed that to me, as well, like what  
2 they thought I was doing the right thing to keep doing what I'm  
3 doing, that sort of thing.

4 Q. Did you notice any other of your co-workers wearing "Black  
5 Lives Matter" masks?

6 A. I did not.

7 JUDGE SOTOLONGO: How about any like pins or -- with  
8 "Black Lives Matter" messaging or anything else, hats, or  
9 necklaces, or anything like that?

10 THE WITNESS: Not that I recall.

11 JUDGE SOTOLONGO: Okay.

12 Q. BY MR. PETERSON: During that same time period between  
13 June 16th and August 1st, did you have any conversations with  
14 Whole Foods workers from other stores?

15 A. Yes.

16 Q. Which other stores?

17 A. The store in Cambridge, Massachusetts.

18 Q. And how did those discussions, what forum -- how did those  
19 conversations occur?

20 MR. BROWN: Objection. Your Honor, we will stipulate as  
21 to the concerted nature of the communications. Otherwise, it's  
22 not relevant to her wearing the mask in the store, which she's  
23 already testified about. Just trying to speed things up a  
24 little bit.

25 JUDGE SOTOLONGO: She wore this mask and she talked to

1 employees about it, and -- who the employees in this particular  
2 store during that action -- I think it's not in dispute that  
3 this concerted action is not to be -- other employees in that  
4 same store. It can be employees from other stores, and we have  
5 \*\*\* in this case, whether other employees in other stores were  
6 engaged in this type of activity.

7 MR. PETERSON: Just a question or two.

8 JUDGE SOTOLONGO: Okay, go ahead.

9 Q. BY MR. PETERSON: What was your understanding of what was  
10 happening at the Cambridge store regarding "Black Lives  
11 Matter"?

12 A. Yeah. I saw that, you know, employees were asked to leave  
13 because they were wearing --

14 MR. BROWN: Objection, Your Honor. What was her  
15 understanding of what was going on in other stores, after she's  
16 been wearing the mask for over a month?

17 MR. PETERSON: I thought this wasn't in dispute. I was  
18 trying to cut it short and get --

19 MR. BROWN: It's still not relevant.

20 JUDGE SOTOLONGO: I agree, this is -- let me ask this.  
21 When you first started wearing your "Black Lives Matter" and  
22 the "No justice, no peace" masks, these masks you've been  
23 testifying about today, when you first started wearing them,  
24 were you aware that employees at other stores, Whole Foods  
25 stores, were doing the same thing, wearing similar messaging?



1 THE WITNESS: Yes.

2 JUDGE SOTOLONGO: So from day one you knew this?

3 THE WITNESS: Yes.

4 JUDGE SOTOLONGO: And how did you know that?

5 THE WITNESS: Well, I read the article on Facebook about  
6 the store in Philadelphia.

7 JUDGE SOTOLONGO: Okay. So if I recall correctly, you  
8 came back to work from leave on June 15th or 16th; is that --  
9 15th or the 6th?

10 THE WITNESS: The 16th.

11 JUDGE SOTOLONGO: 16th. Okay. And that's when you first  
12 wore you "No justice, no peace," and nothing happened that day.

13 THE WITNESS: Correct. Those two days.

14 JUDGE SOTOLONGO: The following two days later, you came  
15 back with a "Black Lives Matter" mask and that's when you were  
16 first called out on that?

17 THE WITNESS: Correct.

18 JUDGE SOTOLONGO: So is it your testimony that when you  
19 came to the store on June 16th, wearing your "No justice, no  
20 peace" mask, you were already aware that similar activity,  
21 "Black Lives Matter" related activity, meaning employees  
22 wearing similar type of messaging, was happening in other  
23 stores?

24 THE WITNESS: No. I'm sorry, excuse me.

25 MR. PETERSON: She gave detailed testimony about this

1 earlier in her testimony, about the timing.

2 JUDGE SOTOLONGO: When did you first learn -- so when you  
3 first wore the mask, you were not aware that other employees  
4 were doing the same thing?

5 THE WITNESS: Correct. The two days I wore my "No  
6 justice, no peace" mask, I was unaware of any other activity.

7 JUDGE SOTOLONGO: And then you became aware a day or two  
8 later that -- you saw something on Facebook; is that correct?

9 THE WITNESS: Correct.

10 JUDGE SOTOLONGO: And then following that is when you wore  
11 your "Black Lives Matter". Okay. So, when you first showed up  
12 with it, just to be clear, the first day you showed up with the  
13 "No justice, no peace", you were not aware of what was going on  
14 in the other stores?

15 THE WITNESS: Correct.

16 JUDGE SOTOLONGO: And then the next day or two, before you  
17 showed up again, you saw this posting or news flash in  
18 Facebook, that said that employees at the Cambridge --

19 THE WITNESS: In Philadelphia.

20 JUDGE SOTOLONGO: Philadelphia, excuse me. The  
21 Philadelphia store, had been sent home for wearing "Black Lives  
22 Matter" and that's when you decided to show up the following  
23 day, your following shift, with your "Black Lives Matter" mask;  
24 would that be correct?

25 THE WITNESS: Correct. I -- I had already made the

1 decision to wear it.

2 JUDGE SOTOLONGO: Regardless of what other employees were  
3 doing, or because -- in solidarity with them?

4 THE WITNESS: Yes. Like that specific story in  
5 particular, I had already decided -- I had already had a mask.  
6 I had already had a "Black Lives Matter" mask.

7 JUDGE SOTOLONGO: So that we understand, what prompted you  
8 to wear your "Black Lives Matter" on the second day when you  
9 showed up --

10 THE WITNESS: Mm-hmm.

11 JUDGE SOTOLONGO: Not "No justice, no peace", but the  
12 "Black Lives Matter", you had decided to wear that anyway, and  
13 then you happen to find out that other employees had been doing  
14 the same thing in Philadelphia?

15 THE WITNESS: Correct.

16 JUDGE SOTOLONGO: All right. But you would have shown up  
17 anyway? That would be speculative on my part, I'm not going to  
18 ask the question. Go ahead.

19 MR. PETERSON: Thank you, Your Honor. I have no further  
20 questions.

21 MS. DOHERTY: Your Honor, I may have a few questions. I  
22 know we're under time constraints.

23 JUDGE SOTOLONGO: Don't worry about the time.

24 MS. DOHERTY: Take just about five minutes to look over my  
25 notes?

1 JUDGE SOTOLONGO: Sure, let's take a five-minute break.

2 (Off the record 10:23 until 10:29)

3 JUDGE SOTOLONGO: Let's go back on the record. You going  
4 to offer 56, General Counsel's 56?

5 MR. PETERSON: Yes.

6 (General Counsel's 56 marked for identification.)

7 JUDGE SOTOLONGO: Any objection?

8 MR. BROWN: Yes. Well, just a point of clarification. If  
9 I could ask for voir dire?

10 VOIR DIRE EXAMINATION

11 Q. BY MR. BROWN: I want to understand, Ms. Evans, whether  
12 you -- Page 2 of this exhibit, is something you've ever seen  
13 before? I understand you signed Page 1; correct?

14 A. Correct.

15 Q. And Page 3 is your handwritten statement with your  
16 signature?

17 JUDGE SOTOLONGO: Starting at Page 2 --

18 MR. BROWN: Yes, Page 3.

19 Q. BY MR. BROWN: And my question is about Page 2, whether  
20 you've ever seen this document before?

21 A. I don't recall seeing this document.

22 Q. And then the same questions, if you turn to Page 4, at the  
23 final written unsatisfactory work warning, dated July 25, 2020,  
24 with your signature; correct?

25 A. Correct.

1 Q. And then if you skip to I guess the last page, that's your  
2 handwritten statement with your signature, dated July 25th;  
3 correct?

4 A. Correct.

5 Q. And the page before that, the same question, have you ever  
6 seen that document, the one that says, "Corrective action,  
7 confidential?" No signature of yours?

8 A. I don't recall.

9 JUDGE SOTOLONGO: That's the -- that I read from the  
10 first --

11 MR. BROWN: Right. Your Honor, I'm --

12 JUDGE SOTOLONGO: I wasn't interrupting for the purpose of  
13 --

14 MR. BROWN: No, I understand, Your Honor. I'm just saying  
15 that it's not -- I don't want to slow things down. I just --  
16 I'm not objecting to this exhibit, although I think it should  
17 be noted, and I think the witness has testified, that Pages 2  
18 and 6, I believe, 2, 3 -- Pages 2 and 5 are documents she had  
19 never seen before.

20 JUDGE SOTOLONGO: Because those appear to be internal --

21 MR. BROWN: Yes.

22 JUDGE SOTOLONGO: So duly noted.

23 MR. PETERSON: Yeah, that's --

24 MR. BROWN: Otherwise, no objection. These were produced  
25 pursuant to subpoena.

1 JUDGE SOTOLONGO: Duly noted that two of those pages were  
2 confidential internal company communications, that the witness  
3 had not seen. But this is part of her personnel file, and this  
4 came from the personnel file. All right. 56 is admitted.

5 **(General Counsel 56 received in evidence.)**

6 JUDGE SOTOLONGO: All right, let's take a five-minute  
7 break.

8 **(Off the record 10:23 a.m until 10:29 a.m.)**

9 JUDGE SOTOLONGO: Let's go back on the record. Back on  
10 the record. All right. Please proceed, Ms. Doherty.

11 **DIRECT EXAMINATION**

12 Q. BY MS. DOHERTY: Good morning, Ms. Evans.

13 A. Good morning.

14 Q. At some point in the summer of 2020, did you contact the  
15 press regarding wearing "Black Lives Matter" messaging at Whole  
16 Foods location --

17 MR. BROWN: Objection, relevance. How is that relevant,  
18 Your Honor?

19 MS. DOHERTY: Judge, if I could have some leeway, I'd  
20 just like to ask her a few questions about how she described it  
21 and her -- any reasons given to the press regarding why she was  
22 wearing "Black Lives Matter" messaging to work.

23 MR. BROWN: Why is that relevant? I understand that she's  
24 asking for leeway, Your Honor, but why is that relevant, what  
25 she told a non-Whole Foods -- I mean, you know what, if that's

1 allowed, I will certainly ask questions --

2 JUDGE SOTOLONGO: I don't see how it's relevant,  
3 Ms. Doherty. I mean, it's -- perhaps conversation, because  
4 there's been no evidence produced into the record really ask to  
5 why the employees were communicating with each other, so why  
6 they wanted to do what they did, in regards to the "Black Lives  
7 Matter" movement. What she said to the press isn't really  
8 relevant, unless, for example, it were to contradict something  
9 that she had said to other employees, which right now there's  
10 no evidence of that, and the document might be used by the  
11 employer to rebut her, but that's not in evidence right now.

12 MS. DOHERTY: Okay. Fair enough, Your Honor.

13 Q. BY MS. DOHERTY: Just a couple questions. You had said  
14 earlier that you had some contact with workers at the  
15 Cambridge, Massachusetts Whole Foods location, who were wearing  
16 the "Black Lives Matter" masks to work; right?

17 A. Correct.

18 Q. How did those communications inform your decision, if at  
19 all, to continue wearing the "Black Lives Matter" masks to work  
20 at Whole Foods?

21 A. I would say they definitely contributed a great deal. It  
22 was nice and rather empowering to see other individuals sort of  
23 taking -- fearlessly taking the same stand that I was at my  
24 store, especially since no other individuals at my store were  
25 joining with me.

1 Q. And you had testified earlier to some expressions of  
2 support that you received from your co-workers at your store  
3 location.

4 A. Yes.

5 Q. How did those expressions of support inform your decision  
6 to continue to where the mask, if at all?

7 A. Oh, very greatly, as well. Their private and silent  
8 support, like messages and like just coming up to me  
9 personally, definitely like helped inform my decision to  
10 continue wearing the mask. In many ways I sort of felt like I  
11 was taking on the fact that, you know, some of them, like for  
12 example, my one co-worker, former co-worker, who wore the  
13 "Black Lives Matter" tee-shirt, she didn't continue to wear it  
14 for essentially fear of retaliation, so I felt like I was  
15 taking on a lot of those people who maybe were afraid of  
16 retaliation, afraid to sort of joint with me, but like were  
17 privately reaching out and saying like, you know, we support  
18 you, keep doing what you're doing.

19 MS. DOHERTY: Those are all the questions I have right  
20 now.

21 JUDGE SOTOLONGO: All right. Mr. Brown? Counsel review  
22 the affidavit? A little more time?

23 MR. BROWN: Your Honor, what I'd propose doing, is  
24 beginning the cross-examination and then I can take a break,  
25 when we need to take our first break, I will finish the last



1 two pages of the affidavit.

2 JUDGE SOTOLONGO: Okay.

3 MR. PETERSON: For the record, I've tendered to  
4 Respondent's counsel the original affidavit that is ten pages,  
5 and a supplemental that is two pages.

6 JUDGE SOTOLONGO: Very well. I appreciate that. Please  
7 proceed, Mr. Brown. If you need like a break to finish the  
8 last few pages, let me know.

9 MR. BROWN: Thank you.

10 **CROSS-EXAMINATION**

11 Q. BY MR. BROWN: Good morning, Ms. Evans. I have a few  
12 questions for you, and we'll go as quickly as we can, but take  
13 your time, as you see fit.

14 You testified that you were a Whole Foods Market team  
15 member at the Marlton, New Jersey, store; correct?

16 A. Correct.

17 Q. And does it in any way comport with your recollection that  
18 you began work on March 19th of 2017?

19 A. Correct.

20 Q. And you worked part time as a team member in the prepared  
21 foods team or department, through August 1st of 2020; correct?

22 A. Correct.

23 Q. And for the -- I just want to do this very quickly. For  
24 the relevant time period, the store team leader, the head of  
25 the store, was Carol Kingsmore; correct?

1 A. Correct.

2 Q. And during the summer of 2020 the two associate store team  
3 leaders were Nick Polidore or Polidore, P-o-l-i-d-o-r-e;  
4 correct?

5 A. Correct.

6 Q. And Gersi Mollaj? I'm probably mispronouncing it but does  
7 that comport with your recollection?

8 A. Correct.

9 Q. And the team leader in prepared foods, your team leader,  
10 was Michael Stellaccio?

11 A. Correct.

12 Q. S-t-e-l-l-a-c-c-i-o; yes?

13 A. Correct.

14 Q. And you had associate team leaders, the assistant  
15 managers, and you testified one is Brea Falice, B-r-e-a, F-a-l-  
16 i-c-e?

17 A. Correct.

18 Q. And Daniella Nunn, N-u-n-n?

19 A. Correct.

20 Q. And I believe you testified that prior to the summer, you  
21 returned from a leave of absence, an associate store team  
22 leader, had the name Kevin; is that correct?

23 A. Correct.

24 Q. And Do you remember Kevin's last name?

25 A. I don't.

1 Q. Your role at Whole Foods in the prepared foods department,  
2 and I know you testified about the different teams you worked  
3 on within the prepared foods team, those were all customer-  
4 facing roles; do you agree with that?

5 A. Yes.

6 Q. You interacted with customers throughout the course of  
7 your workday?

8 A. Correct.

9 Q. And I think you testified that the deli -- well, the  
10 prepared foods team, had a uniform; is that correct?

11 A. Correct.

12 Q. And that uniform included -- did you say chef's pants?

13 A. Yeah, chef's pants or jeans, something that's a pant  
14 material, that's relatively safe for that department.

15 Q. And chef pants, are those those black and white checkered  
16 pants?

17 A. Black, black and white, a variation.

18 Q. And then a chef's coat was part of the uniform, as well;  
19 correct?

20 A. Correct.

21 Q. And the chef's coat is a full coat. I think, if I  
22 remember, it has some buttons on the side?

23 A. Correct.

24 Q. So it covers your full torso?

25 A. Correct.

- 1 Q. And does it have a Whole Foods Market logo on it?
- 2 A. Yes, it does.
- 3 Q. It's that green one inch or two inch circle, that has
- 4 Whole Foods Market?
- 5 A. Yes.
- 6 Q. Did you wear a nametag?
- 7 A. We were required to, but I often did not.
- 8 Q. And when you wore a nametag, where was it placed?
- 9 A. Initially I would place it on my jacket, but there were
- 10 times where I would put it on my hat.
- 11 Q. Is that because you were working with your hands and you
- 12 were working over food?
- 13 A. No, I wouldn't say that's the reasoning. That just
- 14 happened to be where I placed it.
- 15 Q. Okay. And what kind of hat did you wear? Did you wear a
- 16 Whole Foods Market hat?
- 17 A. I did.
- 18 Q. And did it say the name of the store, Marlton, on it?
- 19 A. I believe it just said Whole Foods.
- 20 Q. Anything on the back of the hat that said Marlton?
- 21 A. I don't believe so.
- 22 Q. Anything on the back of the hat at all?
- 23 A. I don't believe so.
- 24 Q. Any other part of this uniform -- what I heard was either
- 25 jeans, chef's pants, a chef's coat that covered your body, and

1 then you wore a Whole Foods Market hat, and sometimes you wore  
2 your nametag on that?

3 A. Correct.

4 Q. Anything else?

5 A. Yes. In prepared foods, specifically -- I obviously can't  
6 speak on behalf of the other deposition -- we had to wear slip-  
7 resistant shoes, because the floors and whatnot in the kitchen  
8 are wet.

9 Q. Okay. You testified a few times just earlier that you  
10 were working next to somebody who had made a racist comment.  
11 Do I have that right?

12 A. Yes.

13 Q. And I want to be clear about this. At no point ever in  
14 all of your time at Whole Foods, had you ever made a complaint  
15 about any discrimination relating to any comments or conduct by  
16 a team leader or anyone in store leadership? Do I have that  
17 right?

18 A. Yes.

19 Q. The only complaint that you ever made was about this  
20 employee, John; yes?

21 A. Correct.

22 Q. And do you recall that that complaint that you made about  
23 John was in February of 2019?

24 A. Correct. I thought it was later than that, but correct,  
25 it could have been in 2019.

1 Q. Well, I want to be a little more definitive. Do you  
2 recall giving a deposition in this other litigation that you  
3 referenced, filed in the District of Massachusetts case?

4 A. Yes.

5 Q. And do you recall giving the following testimony?

6 Question, "And so this comment you found to be, you said  
7 racially insensitive, who did you report that to?" Answer, "My  
8 manager named Michael Stallaccio."

9 Question, "And first of all, let me ask you, when was this  
10 comment made? When did this incident occur?" Answer, I would  
11 probably say February, 2019."

12 Question, "February of '19?" "Yes."

13 Does that refresh your memory in any way that you  
14 testified under oath that the incident you're referring to with  
15 John and the burnt rolls, was in February of 2019?

16 A. Correct.

17 Q. That's a year and a half before your termination of  
18 employment; correct?

19 A. Correct.

20 Q. And with regard to the comment that you testified about --  
21 I'm not going to go over the whole thing. I think you  
22 explained that pretty completely -- you immediately said to the  
23 team member who made this insensitive racial remark, that you  
24 didn't find that acceptable; right?

25 A. Correct.

- 1 Q. You complained to your team leader.
- 2 A. Correct.
- 3 Q. That team leader reported it to the associate store team
- 4 leader that say day; right?
- 5 A. I believe so, but I'm not entirely sure.
- 6 Q. And then the associate store team leader named Kevin, that
- 7 same day, interviewed you about the incident; right?
- 8 A. Correct.
- 9 Q. And that say day you testified, did you not, that Kevin,
- 10 the associate store team leader, interviewed John about this
- 11 racially insensitive remark?
- 12 A. Correct.
- 13 Q. And did you learn that John was, in fact, disciplined for
- 14 making this remark you complained about?
- 15 A. Yes.
- 16 Q. And was that discipline to be a permanent final corrective
- 17 action?
- 18 A. Correct.
- 19 Q. And your understanding of that is that if he screwed up in
- 20 any way after February of 2019, he would be fired; correct?
- 21 A. Correct.
- 22 Q. Did John ever make any racially insensitive remarks to you
- 23 ever again after that point?
- 24 A. He did not.
- 25 Q. And your position, as I understand it, is that you found

1 it unacceptable that John was not fired?

2 A. Correct.

3 Q. Your position was that if John violated a policy, the  
4 Whole Foods policy, he should be terminated, and not given any  
5 opportunity to correct his actions. Do I have that right?

6 MR. PETERSON: Asked and answered and relevance.

7 MR. BROWN: Lots of relevance, Your Honor. This is the  
8 witness violated the policy --

9 JUDGE SOTOLONGO: I'm going to allow it. Go ahead.

10 Q. BY MR. BROWN: Your position is that he should have been  
11 terminated for violating the Whole Foods policy one time.

12 A. Correct, the policy, yes.

13 Q. And your position was that you found that -- actually, let  
14 me ask you this. You're wearing your "Black Lives Matter"  
15 related masks at work in June and July; correct?

16 A. Correct.

17 Q. Okay. And you said, I think a few times, to store  
18 leadership that working next to John a year and a half or so  
19 earlier, had made this one racial remark to you, was what, was  
20 contradictory or why were you referencing John?

21 A. Well, my perspective was that, you know, I was -- I just  
22 didn't find it appropriate that I was being asked to remove my  
23 "Black Lives Matter" mask when that is, from my understanding,  
24 a message of positivity, a message about equality, quite  
25 literally a message about racial equality, and I was, you know,



1 being asked to take that off or leave the store, and that I  
2 couldn't work, but John is able to say something as ridiculous  
3 and incredibly inappropriate as he did, and, you know, he's --  
4 he was still working. That was my --

5 Q. And you were told, I don't know how many times. I can  
6 count it up, maybe 20 times, 18 times, that you and your  
7 wearing of the "Black Lives Matter" mask, was a violation of  
8 company policy; right?

9 A. Correct.

10 Q. And you weren't fired the first time, the second time,  
11 even the 17th time, were you?

12 A. Correct.

13 Q. It was after verbal warning, written warning, final  
14 warning, lots of discussions, until ultimately you're  
15 terminated; is that right?

16 A. Correct.

17 Q. Let me ask you a couple things. After -- and I think you  
18 testified to some of this -- after the murder of George Floyd,  
19 you're aware there were protests and other demonstrations and  
20 other signs of support for the Black Lives Matter generally,  
21 around the country, beginning and after May 25th of 2020?

22 A. Correct.

23 Q. And Black Lives Matter is an organization; correct?

24 A. Correct.

25 Q. And that organization champions black issues, social

1 equality, prison reform and other issues; is that correct?

2 MR. PETERSON: Objection, relevance.

3 JUDGE SOTOLONGO: What's the name of this organization?

4 MR. BROWN: Black Lives Matter.

5 JUDGE SOTOLONGO: Black Lives Matter, okay.

6 MR. BROWN: I don't know how much more relevant it could  
7 be.

8 MR. PETERSON: They're not involved with the Black Lives  
9 Matter organization. I mean, this is similar testimony that  
10 I've been objecting to about private issues, things that go --

11 JUDGE SOTOLONGO: I'll give a little leeway. Go ahead.

12 MR. BROWN: I just don't understand how it could be more  
13 relevant. She's wearing the actual words of the organization  
14 across her face.

15 MR. PETERSON: The message is more than just the  
16 organization, and she's not wearing the organization. There's  
17 no evidence that she's sponsored by the organization.

18 MR. BROWN: Do we know that?

19 JUDGE SOTOLONGO: I think -- the expert, is he going to  
20 talk about Black Lives Matter as an organization?

21 MR. PETERSON: To distinguish it.

22 JUDGE SOTOLONGO: I'll allow it.

23 Q. BY MR. BROWN: You're aware -- I'll ask you this. You're  
24 aware of the organization called Black Lives Matter?

25 A. Correct.

1 Q. And the logo of that organization is "Black Lives Matter";  
2 right?

3 A. Correct.

4 Q. And the mask you were wearing -- and the logo for Black  
5 Lives Matter is black with -- do I have that right, black with  
6 white writing, that says, "Black Lives Matter"?

7 A. Correct.

8 Q. And the mask you were wearing was black, with white  
9 writing that said, "Black Lives Matter", and the Black Lives  
10 Matter power fist; right?

11 A. Correct.

12 Q. I'm going to ask the question again, the Black Lives  
13 Matter organization champions black issues, social equality,  
14 prison reform and other issues; isn't that right?

15 JUDGE SOTOLONGO: If you know.

16 THE WITNESS: Yes, correct.

17 Q. BY MR. BROWN: And that organization, Black Lives Matter,  
18 also champions police reform?

19 A. Correct.

20 Q. It also supports educational reform?

21 A. Correct.

22 Q. Supports reform of the court systems?

23 A. Right.

24 Q. Okay. Supports defunding the police?

25 A. Correct.

1 Q. And that organization takes positions on political issues,  
2 like gun control and housing and abortion?

3 A. I'm personally unfamiliar with the abortion aspect, but  
4 other than that; correct.

5 Q. So I said gun control, housing?

6 A. Mm-hmm.

7 Q. Yes?

8 A. Yes.

9 Q. Just for the record, you --

10 A. Yes.

11 Q You said yeah, okay. They address other political issues  
12 that you're aware of?

13 A. Yes.

14 Q. What other political issues does Black Lives Matter  
15 address?

16 A. We've touched on a lot of them, like police reform, racial  
17 equality -- justice system, you know, educational aspects. You  
18 pretty much touched on all of them.

19 Q. Thank you. Before the murder of George Floyd, and we've  
20 all agreed it's May 25th of 2020, you had never worn face masks  
21 while working at Whole Foods, that said anything; correct? Let  
22 me withdraw that. Had you ever worn a face mask at Whole Foods  
23 before coming back to work on June 16th?

24 A. I did not.

25 Q. And had you ever worn "Black Lives Matter" paraphernalia,

1 whether it was a mask or a pin, at any time before June 16th?

2 A. I did not.

3 Q. And again, just kind of to speed things up, you went on a  
4 voluntary unpaid leave of absence from March of 2020 through  
5 June 15th of 2020?

6 A. Correct.

7 Q. That was related to COVID or not related to this issue of  
8 Black Lives Matter; correct?

9 A. No, it was related to COVID.

10 Q. And then you chose, as I understand it, sometime in early  
11 June, you made a decision to wear -- in early June, June 9th, I  
12 believe, to wear -- June 8th of 2020, to wear "Black Lives  
13 Matter" messaging on your mask, when you returned to Whole  
14 Foods; is that correct?

15 A. Correct.

16 Q. And, in fact, on June 8th of 2020, you ordered masks --

17 JUDGE SOTOLONGO: Okay, let me -- I recall that her  
18 testimony, that she returned June 15th or 16th. Are you saying  
19 now that it was actually earlier?

20 MR. BROWN: Well, Your Honor, I think she just testified  
21 that in early June she had the decision that when she returned,  
22 she would be wearing these masks.

23 JUDGE SOTOLONGO: All right, go ahead. Sorry.

24 Q. BY MR. BROWN: Do I have that right?

25 A. Yes.

- 1 Q. Okay. And you bought different kinds of masks online.  
2 Black Lives Matter related messaged masks. Do I have that  
3 right?
- 4 A. Correct.
- 5 Q. One of the messages on your "Black Lives Matter" related  
6 mask was "No justice, no peace"; correct?
- 7 A. Correct.
- 8 Q. And that is a "Black Lives Matter" related message?
- 9 A. Correct.
- 10 Q. And another mask you had was "Black Lives Matter"?
- 11 A. Correct.
- 12 Q. And that's the one you showed us; right?
- 13 A. Correct.
- 14 Q. And has the white power fist? Am I using the right word?
- 15 A. Yes.
- 16 Q. The black power fist or --
- 17 A. Correct, yes.
- 18 Q. Is that your word or --
- 19 A. That was the word that I used.
- 20 Q. Okay. And did you have another mask that you ordered or  
21 that you wore at Whole Foods?
- 22 A. I had another mask that I ordered but those were the only  
23 two masks that I wore at Whole Foods.
- 24 Q. I believe you testified that you had I want to say "Black  
25 Power," do I have that right?

- 1 A. Oh, yes, yes, yes, yes.
- 2 Q. What did the mask say?
- 3 A. "All power to the people."
- 4 Q. "All power to the people." And did you ever wear that to  
5 Whole Foods, to work at Whole Foods?
- 6 A. Correct. I wasn't necessarily working a shift, but I wore  
7 it to a meeting that was during a shift.
- 8 Q. Thank you. And the "All power to the people," is that a  
9 Black Lives Matter related mask, as well?
- 10 A. It is.
- 11 Q. Is that also a political statement, "All power to the  
12 people," Black Panthers statement?
- 13 A. Yes.
- 14 Q. And just to be clear, you were the only team member during  
15 your entire term of employment, who wore a "Black Lives Matter"  
16 related mask?
- 17 A. Correct.
- 18 Q. And nobody else wore a pin, a Black Lives Matter pin or  
19 jewelry of any kind?
- 20 A. Not to my recollection.
- 21 Q. Okay. You testified, as I recall, that the reason that  
22 you decided to wear the Black Lives Matter related messaging on  
23 your mask, and I know I was pointing here, but on your mask,  
24 was because of what was going on in the world. That's what I  
25 wrote down.

1 A. Yes.

2 Q. What was going on in the world?

3 A. There was obviously at that time a lot of racial tension,  
4 you know, obviously the horrific way that George Floyd was  
5 murdered, yeah, it -- it had a lot to do with that.

6 Q. And Your view, as I understand it, was that you were  
7 wearing first, the "No justice, no peace" and then the "Black  
8 Lives Matter" written out on your mask, in support of what was  
9 going on in the world, as you just testified, the racial  
10 tensions going on in the world, the murder, the horrific murder  
11 of George Floyd; correct?

12 A. Correct.

13 Q. With regard to the dress code, at some point you were  
14 aware that Whole Foods, the company, was taking a position that  
15 "Black Lives Matter" messaging, whether it's "No justice, no  
16 peace" or "Black Lives Matter", or other related Black Lives  
17 Matter messaging, went against the dress code; right?

18 A. Correct.

19 Q. You didn't agree with that policy?

20 A. Correct.

21 Q. And notwithstanding the fact that you had been told this  
22 violated the policy, you chose on your own to keep wearing the  
23 mask.

24 A. Correct.

25 Q. And you chose to keep wearing the mask for the reasons



1 we've just discussed. It was an important issue to you; right?

2 A. Correct.

3 Q. And, in fact, it was an issue that I believe you testified  
4 in your deposition that was a fundamental human rights issue;  
5 is that correct?

6 A. Correct.

7 Q. And when you say that "Black Lives Matter" is a human  
8 rights issue, you're referring to the murder of George Floyd  
9 and other people of color, who have been murdered by racist  
10 police and other racists; correct?

11 A. Correct.

12 Q. And I believe you also testified that your wearing "Black  
13 Lives Matter" on your mask related not only to George Floyd,  
14 but the right to black life itself; is that right?

15 A. Correct.

16 Q. When you were wearing these "Black Lives Matter" messaging  
17 on your face mask at Whole Foods in the Marlton store, was it  
18 your intention to convey all of those reasons for wearing the  
19 mask that you've just testified to, to customers coming in, who  
20 you were interacting with face to face?

21 A. Yes.

22 Q. And did you engage in any discussions with customers about  
23 why you were wearing your "Black Lives Matter" related  
24 messaging on your mask?

25 A. I did not.

1 JUDGE SOTOLONGO: And that's because, other than the first  
2 day, when you wore the "No justice, no peace" mask, all the  
3 other days you went home after only a short time on your shift;  
4 would that be accurate?

5 A. Yes. There was one shift where -- where I had started to  
6 serve a customer, but very quickly into it, I was removed from  
7 the deli counter.

8 Q. BY MR. BROWN: Thank you. The intention, as I think you  
9 testified, in wearing that mask was to convey the message that  
10 you testified about, to customers, if you had been given the  
11 opportunity to do so?

12 A. Correct.

13 Q. Okay. And in prepared foods, and the areas that you were  
14 working, you had to serve customers. They weren't serving  
15 themselves; right?

16 A. Correct.

17 Q. The words "No justice, no peace", I know you said it was a  
18 Black Lives Matter related message, but what do you understand  
19 that message to mean?

20 A. Well, it's --like you stated, and like I've stated, it's  
21 very closely related to Black Lives Matter, and essentially my  
22 understanding of it is that, you know, until black people are  
23 treated fairly, you know, no justice, no peace. There won't be  
24 -- there won't be peace until there's justice.

25 Q. So until, for example, the police in Minneapolis are held

1 accountable for the murder of George Floyd, there would be no  
2 peace?

3 A. Correct.

4 Q. Is that a good example?

5 A. Yes.

6 Q. Same with the murder of Breonna Taylor?

7 A Mm-hmm.

8 Q You have to say verbally. I'm sorry.

9 A. Correct.

10 Q. And Philando Castile, and so many other people of color  
11 who were murdered; is that correct?

12 A. Correct.

13 MR. BROWN: Your Honor, if I could take just a quick  
14 break to use the washroom?

15 **JUDGE SOTOLONGO: Sure. Let's take a five-minute break.**

16 **(Off the record 10:58 a.m. until 11:01 a.m.)**

17 **JUDGE SOTOLONGO: All right, please proceed.**

18 MR. BROWN: Thank you, Your Honor.

19 Q. BY MR. BROWN: Ms. Evans, I just want you, if you could,  
20 look at the exhibit that was presented to you by counsel, and  
21 I'm referring you to the first page of General Counsel's  
22 Exhibit 56. And in the middle of the page this written  
23 "Unsatisfactory work warning," dated July 8th of 2020, in the  
24 middle it says, "Details of above, TM." Is that a team member?

25 A. Yes.

1 Q. "Has three separate absences in a 30-day period from June  
2 22, 2020, to July 8, 2020; correct?

3 A. Correct.

4 Q. And then after the word "absences," there's a whole host  
5 of dates listed that you were noted as being absent, and I want  
6 to confirm that none of those dates were the dates that you  
7 were initially wearing the "No justice, no peace" mask.

8 A. No, these were all dates where I was wearing a "Black  
9 Lives Matter" mask.

10 Q. Because the first two days no one said anything to you.

11 A. Correct.

12 Q. You weren't given any warning; correct?

13 A. Correct.

14 Q. This is a court reporter -- I know it's conversational.  
15 But then when you wore another "Black Lives Matter" related  
16 mask, on the 22nd, now management, leadership, of the store,  
17 told you this isn't acceptable under the dress code; correct?

18 A. Correct.

19 Q. And it's from that point on that leadership noted your  
20 violations of the policy; correct?

21 A. Correct.

22 Q. With respect to the violations, you were told, were you  
23 not, that when you clocked out early from your shift, because  
24 you were told that you could only work if you were in  
25 compliance with the dress code, and then you refused, you were

1 told that you would be getting attendance points; right?

2 A. Correct.

3 Q. And you were aware of the general information guide, the  
4 handbook?

5 A. Somewhat.

6 Q. And when you were hired, you were provided a copy of that  
7 handbook; correct?

8 A. Correct.

9 Q. And you were aware of the dress code policy?

10 A. Correct.

11 Q. And without going over testimony you've gone over too  
12 much, you understood that there were no logos, messaging,  
13 political statements, permitted -- or advertising permitted on  
14 your clothing at Whole Foods; correct?

15 A. Correct.

16 Q. And just to be clear, I think the judge clarified this,  
17 but I want to be clear. Whole Foods gave you on occasion Whole  
18 Foods stuff, like tee-shirts and hoodies and other apparel; is  
19 that right?

20 A. Correct.

21 Q. And then at some point did Whole Foods' vendors like, I  
22 don't know, the coffee -- did they give you tee-shirts and  
23 things, as well?

24 A. Well, I didn't work in coffee, so I wasn't given any of  
25 that stuff.

1 Q. Other vendors?

2 A. Perhaps. I think so.

3 Q. And that falls under the category of like Whole Foods  
4 blessed, or Whole Foods approved apparel; correct?

5 A. Correct.

6 Q. And if you were not wearing Whole Foods approved apparel,  
7 it was supposed to be like a solid color or a single color  
8 shirt. Do I have that right?

9 A. Correct.

10 Q. Okay. After -- let me withdraw that. Beginning on June  
11 16th, when you returned to work after the leave of absence and  
12 were wearing the "Black Lives Matter" related messaging, all  
13 the way through the termination of your employment on August  
14 1st, you didn't wear that Justin Bieber tee-shirt; correct?

15 A. I did not. I don't believe so.

16 Q. And, in fact, from June 16th to August 1st, you didn't  
17 wear any tee-shirts that violated the dress code; isn't that  
18 right?

19 A. I don't believe so.

20 Q. The policy, the GIG policy on attendance, states that if  
21 you don't work -- if you're not able to or you don't complete a  
22 shift, that is counted as an absence; correct?

23 A. Correct.

24 Q. And if you have three absences within a 30-day period, you  
25 get a discipline. Do you understand that?

1 A. Yes, correct.

2 Q. So you had been warned repeatedly. I think you testified  
3 that when we looked at GC-56, on June 22nd, June 24th, June  
4 27th, June 29th, July 1st, July 4th, July 6th, that you were in  
5 violation of the dress code?

6 A. Correct.

7 Q. And then ultimately on July 8th, you're issued this  
8 written warning; correct?

9 A. Correct.

10 Q. And you knew and understood that you were moving down the  
11 path towards more discipline; correct?

12 A. Correct.

13 Q. And you were prepared to live with that, because you had  
14 every intention and you did continue wearing the Black Lives  
15 Matter related messaging on your mask; right?

16 A. Correct.

17 Q. And so with regard to -- and now I'm just looking at this  
18 document. I'm looking at the final warning. It's Page 4. It  
19 says, "Final written unsatisfactory work warning." It has,  
20 again, it lists four absences in an additional 30-day period;  
21 correct?

22 A. Correct.

23 Q. And there's a checkmark that says, "Repeated violation of  
24 attendance policies will result in further corrective action up  
25 to and including termination of employment." You see that?

1 A. Yes.

2 Q. And you knew and understood that; correct?

3 A. Correct.

4 Q. And you were prepared to live with those consequences  
5 because you had every intention and did continue wearing that  
6 mask?

7 A. Correct.

8 Q. I want to show you a document that we will marked for  
9 identification as Respondent's Exhibit 65.

10 **(Respondent's Exhibit 65 marked for identification.)**

11 Q. BY MR. BROWN: Which is the termination -- your separation  
12 form.

13 JUDGE SOTOLONGO: 65; correct?

14 MR. BROWN: Yes, sir.

15 Q. BY MR. BROWN: Ms. Evans, I'm showing you a one-page  
16 document bearing in the lower right corner WFM246, that has  
17 been marked for identification as Respondent's Exhibit 65, and  
18 do you see that document?

19 A. Yes.

20 Q. Is that your signature on the bottom of the page?

21 A. Yes, it is.

22 Q. And is it dated August 1st of 2020?

23 A. Correct.

24 Q. And is this your team member separation form?

25 A. Yes.



1 Q. Now, you signed this on August 1st in the meeting with  
2 Carol Kingsmore, when she terminated your employment. Do I  
3 have that right?

4 A. Yes.

5 Q. In addition to signing this document, do I understand, as  
6 well, that at the beginning of the meeting you signed other  
7 forms?

8 A. Yes.

9 Q. And one of those other forms was a timesheet for the  
10 meeting -- remember, you testified about the meeting, you came  
11 in and you met with Gersi; correct?

12 A. Correct.

13 Q. That was the day you called out from work.

14 A. Mm-hmm.

15 Q. Yes?

16 A. Yes.

17 Q. That was a day you called out from work, you didn't want  
18 to come in that day because you knew you would be disciplined  
19 for -- or receive attendance points for wearing your "Black  
20 Lives Matter" mask.

21 A. Yes.

22 Q. And Gersi invited you to come in to talk?

23 A. Yes.

24 Q. On the day of your termination, you filled out a payroll  
25 form or timesheet to be paid for the time that you met with

1 Gersi. Do I have that right?

2 A. Yes.

3 Q. And at this meeting, this termination meeting, Carol  
4 Kingsmore told you that all of these accumulated attendance  
5 points had resulted in -- which were the result of violating  
6 the dress code, then resulted in the termination of your  
7 employment; right?

8 A. Yes.

9 Q. After -- well, I should say -- let me withdraw that. And  
10 I'm sorry for jumping around. If you could go back to General  
11 Counsel's Exhibit 56? And looking at Page 4, the final written  
12 unsatisfactory work warning, in the middle of the page, July  
13 8th, that was the date that you received the first corrective  
14 action; right?

15 A. Yes.

16 Q. You wore the "Black Lives Matter" mask that day too?

17 A. Yes.

18 Q. And left work early?

19 A. Correct.

20 Q. Then you were out -- withdraw that. Then you left work  
21 early because of the dress code violations on July 11th, 15th  
22 and 22nd; correct?

23 A. Correct.

24 Q. Okay. Now, as I understand it, you came to work on July  
25 25th, 27th and 29th. Do I have that right?

1 A. Yes.

2 Q. Okay. And if you look at Respondent's Exhibit 65, the  
3 one-page separation form, and under C, Explanation of Reason,  
4 checked above, and what's checked above is attendance. It  
5 says, "Team member has three absences in a 30-day period," and  
6 it identifies July 25th, July 27th and July 29th. Do I have  
7 that right?

8 A. Yes.

9 Q. And those were days that you had come to work and left  
10 work early for violating the dress code.

11 A. Correct.

12 Q. And on July 29th, which was your last day before August  
13 1st, do I have that right?

14 A. Correct.

15 Q. Ms. Kingsmore told you on July 29th that when you came in  
16 the next day, the next scheduled shift, on August 1st, you were  
17 going to discuss the termination of your employment; right?

18 A. Correct.

19 Q. And at that August 1st termination meeting, she advised  
20 you that you were terminated for violating the dress code;  
21 right?

22 A. Correct.

23 Q. And after she terminated your employment, you handed her a  
24 copy of the complaint and the Title VII lawsuit; right?

25 A. I think I handed it to her during.

1 Q. While she was talking to you?

2 A. I believe so.

3 Q. And she didn't read it, did she?

4 A. No, she put it down and just continued with what she was  
5 doing.

6 Q. Okay. And when Carol terminated your employment for  
7 violating the dress code, what she said was that there was all  
8 those absences that accumulated; correct?

9 A. Correct.

10 MR. BROWN: So I would like to move Respondent's 65 into  
11 evidence.

12 JUDGE SOTOLONGO: Any objection?

13 MR. PETERSON: Yeah, one objection. To the extent -- I  
14 think it can be cured, but it includes personally identifiable  
15 information, so I don't have objection if the document that  
16 goes in the file --

17 MS. SCHAEFER: I'll redact it.

18 MR. PETERSON: Address and phone number.

19 MR. BROWN: We agree. We agree.

20 MS. SCHAEFER: The version that I'll upload into  
21 Sharepoint will be redacted.

22 MR. PETERSON: Your Honor, it has her team member I.D.,  
23 which is not a Social Security Number, but we'll redact that,  
24 as well.

25 JUDGE SOTOLONGO: Okay.

1 MR. PETERSON: With those redactions, no objection.

2 JUDGE SOTOLONGO: I'll admit it provisionally with the  
3 understanding that personal information will be redacted.

4 **(Respondent's Exhibit 65 received in evidence.)**

5 MR. BROWN: I'd like to mark a one-page document for  
6 identification as Respondent's 66, for a limited purpose, Your  
7 Honor, if I may.

8 **(Respondent's Exhibit 66 marked for identification.)**

9 Q. BY MR. BROWN: Ms. Evans, I'm showing you a one-page  
10 document that we've marked for identification as Respondent's  
11 Exhibit 6. This was a document that you produced or counsel  
12 produced to us, and it bears Bates Numbers Haley Evans 27. Do  
13 you see that document in front of you?

14 A. Yes.

15 Q. I am seeking to ask you questions about this, only about  
16 the picture, not any of the other stuff around it. Is this the  
17 "No justice, no peace" mask that you wore on the first two days  
18 of your employment back from leave of absence?

19 A. Yes, it is.

20 MR. BROWN: I would move Respondent's 66 into evidence.

21 MR. PETERSON: No objections for that limited purpose.

22 JUDGE SOTOLONGO: All right. It's admitted, so it's just  
23 for the photo; correct?

24 MR. BROWN: Just for the photo, Your Honor, and that's  
25 because I believe the witness said --

1   **(Respondent's Exhibit 66 received in evidence.)**

2   Q.   BY MR. BROWN:  You don't have that mask any longer?

3   A.   Yes, I misplaced it.

4   Q.   The "No justice, no peace" and the "Black Lives Matter"  
5   mask and the "All power to the people," do I have that right?

6   A.   Yes.

7   Q.   Okay.  You wore those masks outside of work, as well?

8   A.   I did, yes.

9   Q.   Okay.  And in what circumstances did you wear it?  Did you  
10   wear it everywhere?  Did you wear it certain places?  Did you  
11   wear it all the time, sometime?

12   A.   I pretty --

13       MR. PETERSON:  I just want to raise a standing objection  
14   to the activities outside of the workplace.

15       JUDGE SOTOLONGO:  All right.  I'll allow it with some  
16   limitation.  So let's see where this goes, but a little --

17       MR. BROWN:  Thank you.

18       JUDGE SOTOLONGO:  Go ahead.

19       THE WITNESS:  Yeah, I wore it running errands, just yeah,  
20   running errands, if I went to exercise at the park, you know.

21   Q.   BY MR. BROWN:  And to be clear, I'm asking you about the  
22   same time period, from let's say June 16th to August 1st, were  
23   you wearing the "No justice, no peace," the "Black Lives  
24   Matter" "All power to the people," Black Lives Matter related  
25   messaging masks that you testified about, outside of work, in

1 that time period?

2 A. Yes.

3 Q. Okay. And the message that you were trying to convey to  
4 the world, to the community, your community, people you're  
5 interacting with, was the same that you've testified to before,  
6 about the purpose of Black Lives Matter; do I have that right?

7 A. Yes.

8 Q. And so the Black Lives Matter related messaging meant the  
9 same thing at work as it meant outside of work?

10 A. Correct.

11 Q. Are you aware, Ms. Evans, that in early June of 2020 --  
12 well, withdraw that. After you began wearing the Black Lives  
13 Matter related messaging, I believe you testified in your  
14 deposition, at least, that there was some sort of crackdown  
15 enforcement of the dress code at the Marlton, New Jersey,  
16 store; is that right?

17 A. Correct.

18 Q. And what did you mean by that?

19 A. I was told by other employees that each team, within their  
20 specific team, were like having meetings about like, you know,  
21 cutting back on wearing, like Nike tee-shirts and masks that  
22 were not related to Whole Foods specifically, and, you know,  
23 other apparel that's not related to Whole Foods.

24 Q. And in fact, I think you testified that you became aware  
25 of a team member during the same period, the June-July period,

1 who showed up to work wearing an NRA tee-shirt?

2 A. Correct.

3 Q. Is that the National Rifle Association?

4 A. It is.

5 Q. And you also learned that that team member was directed by  
6 his or her team leader to wear a chef's coat over that  
7 violative tee-shirt, that tee-shirt that violated the dress  
8 code?

9 A. Correct.

10 MR. BROWN: Your Honor, if I could just finish reading the  
11 Jencks statements, I think I don't have much more.

12 **JUDGE SOTOLONGO: Let's go off the record.**

13 **(Off the record 11:21 a.m. until 11:24 a.m.)**

14 MR. BROWN: No further questions of this witness, thank  
15 you.

16 JUDGE SOTOLONGO: Mr. Peterson, any redirect?

17 MR. PETERSON: Yes, just a couple.

18 **REDIRECT EXAMINATION**

19 Q. BY MR. PETERSON: Ms. Evans, you described the chef pants  
20 that you were wearing at work.

21 A. Correct.

22 Q. Are they baggy?

23 A. Yes, they -- I would say that they're baggy, yes.

24 Q. And are they easy to distinguish from the leggings that  
25 you wore?



1 A. Yes, they are.

2 Q. Were your leggings colored?

3 A. They were like a grayish.

4 Q. It was easy to distinguish that they were not the chef  
5 pants?

6 A. Yes.

7 Q. Your understanding of Black Lives Matter, is it one  
8 organization, many organizations, a movement, or something  
9 else?

10 A. I would say a combination of an organization and a  
11 movement.

12 Q. And you talked about some of the tenets of the Black Lives  
13 Matter movement. Is your understanding that economic justice  
14 for black people is one of the tenets of the Black Lives Matter  
15 movement?

16 A. Yes.

17 Q. And is your understanding that among that is racial  
18 equality in the workplace?

19 A. Yes.

20 MR. PETERSON: Nothing further, apart from the exhibits.

21 MR. BROWN: Which we can talk -- I don't know if Anastasia  
22 is --

23 MS. DOHERTY: Just a couple questions.

24 **REDIRECT EXAMINATION**

25 Q. BY MS. DOHERTY: Point of clarification, you were asked

1 about wearing your face mask inside out on August 1st, when you  
2 were at work; do you remember that?

3 A. I do.

4 Q. Do you recall if you were wearing it inside out when you  
5 went in to meet with Carol?

6 A. I was.

7 Q. And then when, if ever, did you turn it around?

8 A. If I turned it around, I definitely had it inside out when  
9 I left her -- her office.

10 MS. DOHERTY: Nothing further.

11 MR. BROWN: I want to ask about that last question,  
12 because I was a little unclear.

13 **RECROSS-EXAMINATION**

14 Q. BY MR. BROWN: On August 1st you knew that when you came  
15 into work, you were being terminated; right?

16 MS. DOHERTY: Objection.

17 MR. BROWN: Why is that?

18 MS. DOHERTY: Well, my understanding was the testimony was  
19 Carol -- they would discuss separation.

20 JUDGE SOTOLONGO: She can answer that question. Go ahead.

21 Q. BY MR. BROWN: Let me ask it again, if I could. You were  
22 told, I think it was July 29th, that your next shift, you're  
23 going to be terminated; right?

24 A. The way she worded it was that we were going to discuss  
25 separation.

1 Q. And so you came in that day to meet with her; right?

2 A. Yes.

3 Q. And do I understand that your "Black Lives Matter" mask  
4 was inside out?

5 A. Yes.

6 Q. You then go into the meeting and during that meeting, when  
7 she tells you that you're being terminated, isn't it true that  
8 you then took the mask off, reversed it and put it on, the  
9 "Black Lives Matter" was showing? Do I have that right?

10 A. I don't recall. It is my recollection that I may have  
11 turned it around after the meeting. But to my recollection, I  
12 -- I'm not really sure.

13 MR. BROWN: I don't have any further questions.

14 JUDGE SOTOLONGO: All right. Thank you very much,  
15 Ms. Evans. You're excused.

16 MR. BROWN: Your Honor, can I interrupt for one second?

17 JUDGE SOTOLONGO: Sure.

18 MR. BROWN: With regard to the pictures that Mr. Peterson  
19 took, my proposal -- we can do this on or off the record, but  
20 my proposal is that we look at those pictures and have the  
21 witness authenticate them, and then when they're printed out,  
22 at our next session in two weeks, we can agree --

23 JUDGE SOTOLONGO: On the record, so Mr. Peterson took  
24 pictures of your masks here today; is that correct?

25 THE WITNESS: Yes.

1 JUDGE SOTOLONGO: So the pictures are going to show us in  
2 your cell phone, pictures you took today. I have no problem  
3 with that. I mean, he's going to reproduce that in a printed  
4 form, so we can have printouts of those pictures.

5 THE WITNESS: Yes.

6 JUDGE SOTOLONGO: All right. That's not an issue.

7 MR. BROWN: Thank you.

8 JUDGE SOTOLONGO: On the record --

9 MR. BROWN: You don't need that, Judge?

10 JUDGE SOTOLONGO: No, we don't -- she has just testified  
11 Mr. Peterson took pictures today of her masks that she showed  
12 him, and those are going to be introduced in the hard copy  
13 form, once those are produced.

14 Thank you very much, Ms. Evans, for your -- please do not  
15 discuss your testimony with any other witness or potential  
16 witness in this matter until this whole thing is over. Thank  
17 you very much.

18 THE WITNESS: Thank you.

19 JUDGE SOTOLONGO: For coming in today.

20 THE WITNESS: Thank you.

21 **(Witness excused.)**

22 JUDGE SOTOLONGO: All right. You can wait outside, if you  
23 need to meet with Ms. Doherty or Mr. Peterson, and we'll finish  
24 our business here and we should be finished in 15 minutes or  
25 so.

1 All right. I want to discuss on the record the motion  
2 filed by the Charging Party to maintain id confidential  
3 designations -- exhibits. All right. Just so that we are on  
4 the same page, unless I missed something, you didn't specify  
5 exactly which exhibits you are asking me to keep as  
6 confidential or under seal. However, while we were in Boston,  
7 you asked me as certain exhibits were introduced, they were  
8 introduced by the Respondent. And these exhibits, as I recall,  
9 had to do with chats in different platforms, that were  
10 introduced by Respondent's exhibit.

11 Now, going back, and according to my notes, I placed a  
12 temporary seal on Respondent's Exhibits 3, 4, 5, 6. 7 was  
13 withdrawn, so 8, 9, 10, 11, 12, 14, 15, and I don't see --  
14 maybe I missed --

15 MS. SCHAEFER: My numbers differ from yours, Your Honor.

16 JUDGE SOTOLONGO: Oh, okay.

17 MS. SHAEFER: Okay. 9 --

18 MS. DOHERTY: Sure. Your Honor, I also may be of some  
19 assistance. We had filed a brief reply electronically, and I  
20 have some paper copies.

21 JUDGE SOTOLONGO: I haven't seen it so --

22 MS. DOHERTY: Yes. With permission?

23 JUDGE SOTOLONGO: Yes. So I will -- at this point I'm  
24 going to rule on this by mid-week next week. And I will rule  
25 also on the expert witness. In one order -- okay. So let me

1 take -- I see, the list, the actual --

2 MS. SHAEFER: Sorry.

3 JUDGE SOTOLONGO: Go ahead.

4 MS. SHAEFER: I apologize for interrupting.

5 JUDGE SOTOLONGO: That's all right. According to the  
6 document, which I haven't seen, I guess it was filed in the  
7 last day or so.

8 MS. DOHERTY: Correct, yes.

9 JUDGE SOTOLONGO: I don't have access to the file, so  
10 Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 15, so it's a  
11 little longer than my list, I think. Well this explains. I'll  
12 take a look at this and it explains -- and maybe this explains,  
13 but let me ask on the record. Okay.

14 MS. DOHERTY: Yes, Your Honor. So this is an explanation  
15 based on my notes from the hearing in Boston, as to which  
16 exhibits we did request to have sealed. I think there may be  
17 one or two discrepancies with your notes, that I can look at  
18 and try to resolve, as well.

19 JUDGE SOTOLONGO: All right. I'll take a look at this  
20 again. I'm in a hurry, because I need to catch a flight.

21 MR. BROWN: Your Honor, if I could speak for just a quick  
22 minute?

23 JUDGE SOTOLONGO: Yes.

24 MR. BROWN: Next, in two weeks, we have witnesses. As of  
25 now counsel for some of the Charging Parties, not all of them,

1 and not the Government, is claiming two things. Number one,  
2 that these documents need to be under seal. And number two,  
3 that we can't show our witnesses documents that we subpoenaed  
4 and they produced and heavily redacted, and I know Your Honor  
5 wants to consider and take his time in making a ruling on this,  
6 but we are prejudiced as of now in preparing our witnesses.

7 JUDGE SOTOLONGO: Okay. Well, I'll try to make a ruling  
8 as early next week -- hopefully by no later than mid-week and  
9 perhaps earlier, and hopefully that will give you at least a  
10 few days. But then, again, these -- here's what -- we have --  
11 the documents that were placed on temporary seal -- and as part  
12 of the Boston proceedings, and I thought we had wrapped that  
13 up.

14 MR. BROWN: In connection with Philadelphia and in  
15 connection with Marlton, New Jersey --

16 JUDGE SOTOLONGO: Right.

17 MR. BROWN: -- there are communications that were produced  
18 by Ms. Doherty's firm in response to our subpoena, that they  
19 have identified as "Attorney's eyes only" or "Highly  
20 confidential," and are claiming that we can't show our  
21 witnesses any of those documents.

22 JUDGE SOTOLONGO: And what -- company --

23 MR. BROWN: Yeah, company witnesses.

24 MS. SHAEFER: Well, Your Honor, just to be clear, this  
25 issue was not -- this was something that was raised after the

1 subpoenas were issued, after Your Honor's order, indicating  
2 that the documents should be turned over, and after you ordered  
3 the redactions of the document, so this is an additional sort  
4 of designation that's been made, without any discussion or any  
5 sort of review of whether it's even an appropriate designation.

6 We have never agreed to let this continue once the trial  
7 opened. And frankly, the idea of combining these two things, I  
8 think, is really inappropriate. The issue of seal is before  
9 Your Honor --

10 JUDGE SOTOLONGO: You made that point very clear in your  
11 brief, so let me ask Ms. Doherty. So Ms. Doherty, is what  
12 counsel is saying, Respondent's counsel saying, correct, that  
13 they cannot show these documents to their witnesses, number  
14 one? And I assume the answer to that is yes, and that also,  
15 these documents cannot be cited in their brief, for example, as  
16 part of their arguments?

17 MS. DOHERTY: Okay, taking the questions -- yes, our  
18 position would be that they would not be able to show them to  
19 management witnesses, for example, who do not have access to  
20 them or any knowledge about them during the course of their  
21 employment, or when these events were going on, so I don't  
22 think that significantly prejudices them, for that reason.

23 In terms of citing in their briefs, I don't see any reason  
24 why those exhibits couldn't be cited in the brief, with the  
25 proper, you know, perhaps redactions.



1 JUDGE SOTOLONGO: Briefs, and ultimately a decision of  
2 mine would be public record, and if I find the necessity to  
3 cite something that is contained in one of the documents, I  
4 mean, it creates a whole subset of problems, shall I say, that  
5 -- I'm not making a ruling here, but I'm very troubled by this,  
6 quite frankly, because I think that -- I understand your  
7 concern, but the possibility of them, as you raised in your  
8 brief, I mean, there is an allegation of retaliation of  
9 Employer taking -- not so much retaliatory action, but  
10 essentially disciplinary action against employees in this case,  
11 that has to do with employees -- not because of what they said  
12 in chatrooms, but because they violated company policy as far  
13 as the dress code, and because they wore masks, as we have been  
14 hearing. So I'll take a closer look at this, but I have to  
15 say, I'm very troubled by this. And I don't want to say  
16 anything more. I don't want to elaborate. My order will  
17 discuss -- make sure I'll discuss this, and I'll try to do it  
18 as soon as possible because --

19 MR. BROWN: Thank you, Your Honor.

20 JUDGE SOTOLONGO: -- it concerns -- in fact, my writing a  
21 do you earlier will help, if I get there.

22 MR. BROWN: Thank you.

23 JUDGE SOTOLONGO: In any event, all right. One more  
24 housekeeping matter.

25 MR. FERRELL: Your Honor, I just want to raise, just

1   because --

2           JUDGE SOTOLONGO:   Mr. Ferrell.

3           MR. FERRELL:   -- you commented about you --

4           JUDGE SOTOLONGO:   Get a little closer to a microphone.

5           MR. FERRELL:   I just wanted to comment because you stated  
6 maybe one order that would also address the experts early next  
7 week.

8           JUDGE SOTOLONGO:   Yes.

9           MR. FERRELL:   Pursuant to the previously agreed scheduling  
10 order, we have a reply brief that is due, I believe, on  
11 Tuesday, on the expert issue. I just wanted to remind Your  
12 Honor that there is another briefing that's coming up on  
13 Tuesday.

14          JUDGE SOTOLONGO:   I'll have to do it in separate orders.  
15 Well, let's say -- yeah, the expert is less pressing,  
16 obviously, because obviously, should I grant that motion -- I'm  
17 not saying that I will -- I have to look at this very  
18 carefully. Obviously they'll be plenty of time to notify the  
19 witness that she doesn't have to show here -- so my next  
20 question is for you, housekeeping matter, assuming for a second  
21 that I permit the testimony of the expert witness. What time  
22 table are we looking at for two weeks from now? In other  
23 words, we're resuming Tuesday, the 21st. Assuming that we go  
24 forth with the testimony of the expert on that day, I assume  
25 that's going to take most of the day or an entire day, between

1 direct and cross-examination.

2 MR. BROWN: Yeah.

3 JUDGE SOTOLONGO: Always say that, doesn't mean that it's  
4 going to be -- somewhat complex -- what schedule are we looking  
5 at beyond that?

6 MR. BROWN: Your Honor, we anticipate calling three  
7 witnesses, management witnesses. I think realistically it's a  
8 day and a half.

9 JUDGE SOTOLONGO: For those three?

10 MR. BROWN: For those three.

11 JUDGE SOTOLONGO: So in addition to the day for the expert  
12 witness --

13 MR. BROWN: Half a day --

14 JUDGE SOTOLONGO: So say Tuesday, Wednesday and say half a  
15 day Thursday, that's your best estimate?

16 MR. BROWN: That's my best estimate.

17 JUDGE SOTOLONGO: Okay. All right. Very well. Well, I  
18 will then try to issue an order at least on this first issue,  
19 having to do with the sealing of the documents, confidentiality  
20 of the documents, by Monday, hopefully, or Tuesday at the  
21 latest, and I'll address the expert witness separately, because  
22 that's not as urgent for obvious reasons.

23 All right. I appreciate you being able conclude here  
24 earlier. I will cancel my helicopter taxi ride to the airport.  
25 I will just use a regular cab. Thank you very much, and I'll

1 see you all in two weeks.

2 **(Whereupon, at 11:50 a.m., the hearing in the above-entitled**  
3 **matter was adjourned, to resume on Tuesday, June 21, 2022.)**

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C E R T I F I C A T I O N

This is to certify that the attached proceedings before the National Labor Relations Board, Region 04, in the matter of **WHOLE FOODS MARKET SERVICES, INC., Case Nos. 01-CA-263079, 01-CA-263108, 01-CA-264917, 01-CA-265183, 01-CA-266440, 01-CA-273840, 04-CA-262738, 04-CA-263142, 04-CA-264240, 04-CA-264841, 05-CA-264906, 05-CA-266403, 10-CA-264875, 19-CA-263263, 20-CA-264834, 25-CA-264904, 32-CA-263226 and 32-CA-266442**, on **June 9, 2022**, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, at the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected exhibit files are missing.



Bradley E. Weirich

Official Reporter